UNIVERSITY OF PENNSYLVANIA

FEDERAL REGULATION OF RAILWAY SECURITIES UNDER THE TRANSPORTATION ACT OF 1920

JOHN HUTCHINSON FREDERICK

A THESIS

IN ECONOMICS

PRESENTED TO THE FACULTY OF THE GRADUATE SCHOOL IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

PHILADELPHIA
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Table of Contents

PAGE

PART I—THE LAW AND THE COMMISSION'S JURISDICTION

I

Historical Background 7

II

Section 20a of the Transportation Act 14

III

The Administration of Section 20a by the Interstate Commerce Commission 18

IV

The Jurisdiction of the Commission and the Conflict with State Authorities 29

PART II—APPLICATION AND RESULTS

V

Application of the Law to Practical Problems of Railroad Financing 35

VI

The Control of Security Issues in Re-organizations, Consolidations and Projects for New Construction 53

VII

The Interstate Commerce Commission's Control Over Offering Price and Method of Sale 62

VIII

The Attitude of Bankers and Railroad Officials Toward Security Regulation 78

Summary and Conclusions..... 88

Appendix A

Section 20a of the Interstate Commerce Act—Complete Text..... 93

Appendix B

Sales of Railroad Securities Authorized by the Interstate Commerce Commission in Lots of $1,000,000 or over, 1920–1926..... 97

Appendix C

Excerpts from the Interstate Commerce Commission's Investigations of the Financial Affairs of Certain Carriers.....117

Bibliography.....119

PREFACE

This study deals with the work of the Interstate Commerce Commission in enforcing the provisions of the Transportation Act of 1920 requiring its supervision over the security issues of railroad corporations. The actions of the Commission in carrying out the law and its practical application to railroad financing are considered, from June 28, 1920, when Section 20-a went into effect, to December 31, 1926.

The author wishes to acknowledge his indebtedness for helpful suggestions and criticisms to Dean Emory R. Johnson, of the Wharton School of Finance and Commerce, under whose supervision the study was made.

J. H. F.

University of Pennsylvania
Philadelphia, Pa.
June, 1927.

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Chapter I

Historical Background

The regulation of the issuance of securities by railroad companies was first undertaken by individual States as a part of their control over public utilities as exercised through their Public Service or other similar commissions. By 1915 approximately one-half of the States had enacted laws for some sort of regulation of this nature.[1] Such laws served a useful purpose but it was becoming apparent that State authority lacked uniformity of action as well as territorial breadth. State regulation was not adequate, especially as far as large systems were concerned which had their lines in many States with regulating bodies possessing different degrees of authority. Some of the State laws under which a railroad company might operate conflicted so with the laws of other States as to make it almost impossible to secure the approval of all the Commissions to any plan for financing which might be put forward.

It was also becoming apparent that centralized control of the issuance of railroad bonds was more necessary than similar control over those of other corporations because of the fact that efficient and economical financing required that they should, as a rule, constitute a lien on the property of the corporation, no matter where it might be located. The necessity of a railroad making application to the Public Service Commission of each State in which it operated, for authority to issue securities, was not only slow and cumbersome but it offered many opportunities for differences of opinion to arise between the authorities of the separate States. Such differences of opinion often resulted in defeating the proposed financing.

The regulation of security issues by State Commissions was incomplete, to say the least, because of the absence of regulation in many States and also because each of the important railroad

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[1] Cf. Barron, Mary L., *State Regulation of the Securities of Railroads and Public Service Companies,* Vol. LXXVI—Annals of the American Academy of Political and Social Science—1918.

systems of the United States had lines in several States. Because of this condition of affairs the sentiment was growing stronger in the minds of railroad officials, public utility commissioners and others that the Federal Government, acting through the Interstate Commerce Commission, alone could make regulation uniform and effective. Only a few of the discussions and movements which finally led to the adoption of this form of regulation for railroad security issues can be mentioned here.

The Interstate Commerce Commission first recommended to Congress that some reasonable legislation should be imposed on the issuance of railroad securities in its annual report for 1907, as a result of the investigation which it had conducted during that year into the acquisition of control of the Southern Pacific Company by the Union Pacific Railroad Co. Such regulation was urged as a protection to investors in railroad securities. Similar recommendations were made in every annual report until the passage of the Esch-Cummins Act of 1920, more commonly known as the Transportation Act of 1920.

In 1910 a provision had been attached to the Mann-Elkins Act of that year granting the power to regulate the issuance of railroad securities to the Interstate Commerce Commission, but this clause in the bill was stricken out, and, in its place, a provision was made for the appointment of an investigating body. This body, known as the Federal Securities Commission, submitted its report November 1, 1911.

The report of the Federal Securities Commission was unanimously and decidedly conservative. The commission concluded that it was unwise, if not impossible at that time, to place the issuance of railroad stocks and bonds under Federal control, and confined its recommendations to a suggested law requiring complete publicity in regard to the details of each security issue, the amount of the proceeds and the purpose for which they were to be used, to be followed by an accounting for the proceeds. This law would have given the Interstate Commerce Commission the power to investigate all financial transactions of the railroads for the purpose of determining their good faith, but this power would have been to investigate acts which had been completed and not acts which were contemplated. The

Federal Securities Commission believed that railway securities might be issued as the railroad companies saw fit, provided that complete publicity was enforced by the Federal Government. The suggested law was never enacted.

At this time there seemed to be a considerable difference of opinion on the question whether Federal control over securities should provide merely for publicity or whether it should provide for affirmative action by some public authority before the securities in question might be issued. These two opposing theories were generally referred to as the "publicity" method and the "control" method. The publicity method was that favored by the Federal Securities Commission. Of all the states that had provided for control over the issuance of railroad securities, Virginia alone adopted the publicity method.[2] The other states exercised the control method.

In the latter part of 1913 the *Chicago Tribune* addressed the Presidents of the principal railroads of the country with the request for a statement of their position as to the proposals to give the Interstate Commerce Commission the power to supervise the issuance of railroad securities.[3] This is mentioned here as it shows the public interest that was being taken in the matter as well as how railroad officials regarded the subject. The consensus of opinion among railroad men seemed to be in favor of giving the Interstate Commerce Commission this power, but rather because they believed Federal regulation was preferable to regulation by State authorities, than because they believed in any plan for security regulation. The following are extracts from the opinions of two of the Presidents addressed:

H. V. Mudge, President, Chicago, Rock Island & Pacific—

"The railways cannot go on serving so many masters and at the same time continue to give the public the kind of service it requires and deserves. Since Federal control now regulates our rates and revenues, and to a large extent is deciding our wage disputes, it certainly is no more than just that the authority for the regulation of railroad securities should be placed in the hands of the Federal board. . . ."

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[2] *Ibid.*

[3] For extracts from other replies see *Railway Age Gazette*, January 2, 1914, p. 39.

A. H. Smith, President, New York Central Lines—

"National regulation as to the purposes for which securities shall be issued and as to the application of their proceeds might be helpful not only from the public's and investor's point of view, but also as tending to avoid existing conflicting views of the various State Commissions. Such action would be beneficial to all interested in restoring confidence and insuring the integrity of railroad investments."

In 1914 the House passed a bill containing many of the provisions in regard to security regulation which were eventually incorporated in the Transportation Act of 1920, but it failed of passage in the Senate.

In November, 1916, the Committee on Capitalization and Intercorporate Relations of the National Association of Railroad Commissioners reported as follows:

"We reiterate the expression on this subject heretofore promulgated by your Association, and we unhesitatingly and emphatically declare our belief that the capitalization of the interstate carriers and the interstate public utilities should be subject to Federal authority. To state the proposition is at once to answer it. It is not necessary to review the many cases so well known to the members of this Association, wherein several states have attempted to exercise jurisdiction over the identical issue of stocks and bonds by interstate carriers."[4]

In this same year the Rayburn Bill provided for Federal regulation but it failed of passage.

Advocates of Federal regulation of the issuance of railroad securities held that in addition to centralizing this important regulating power, the exercise of such a power by a Federal agency was necessary for the following reasons:

I. Federal regulation was necessary in the public interest since the fixed charges and other capital expenses of the carriers are in proportion to the volume of securities issued. The revenues to meet these expenses are necessarily derived from shippers and passengers. Those who make use of the railroads thus have a direct interest in the volume and character of the

[4] Referendum No. 21—Chamber of Commerce of the U. S., September 12, 1917.

securities issued by the carriers. This contention was contrary to the widespread belief that, owing to the competitive and other economic conditions as well as Government regulation, there was no direct relation between railroad rates and capitalization.

There was, however, a growing recognition that this statement no longer held entirely true as the railroads in rate cases before the Commission, particularly where rate schedules rather than individual rates were involved, nearly always attempted to show that the net income after paying cost of operating and *fixed* charges was not sufficient to yield a fair return to the stockholders. The need of increased revenue through increased rates was always urged. It was, therefore, of vital interest to the shippers and other users of the railroad whether the outstanding securities of the carriers represented actual value and were entitled to a share in their earnings.[5]

II. As investors a large share of the public was affected by the amount and character of railroad securities issued. These investors needed the protection of Federal regulation in order that they might be assured that their funds were being wisely used and their investments protected from unwise financial operations. This argument was largely based on the fact that in the history of our railroads there had been many cases of financial mismanagement—to say the least. The Interstate Commerce Commission had made a number of investigations of the financial transactions of certain carriers which were so notorious as to compel some official action. These reports did

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[5] Commissioner Clements of the Interstate Commerce Commission stated before the National Association of Railway Commissioners in 1912: "It is often said that capitalization has nothing to do with the question of reasonable rates. Perhaps legally and technically speaking that is true, but as a matter of fact it is never left out of view." (Proceedings of the National Association of Railway Commissioners, 1912, p. 219.)

See also a discussion of this matter in Jones, E., *Principles of Railway Transportation*, Chapter XVI, pp. 315–317.

Outstanding cases before the Interstate Commerce Commission where the carriers urged the necessity of meeting fixed charges and having rates placed at such a level as to enable them not only to do this but to attract new capital:

Five Per Cent Case 1914—31 I.C.C. 351.
Five Per Cent Case 1914—31 I.C.C. 325.
Western Rate Advance Case 1915—35 I.C.C. 497.
Western Passenger Fares 1915—37 I.C.C. 1.
Reduced Rates 1922—68 I.C.C. 676.

much to undermine the confidence of investors in railroad securities.[6]

III. Federal regulation was also necessary in order to protect the carriers themselves from improvident financing which might impair their ability to furnish the service which they existed to perform and upon which they depended for their livelihood. Without such regulation it was possible for a limited number of railroad companies by speculative and irresponsible financiering to bring all railroad securities under suspicion. This tended to make it difficult for railroad companies, generally, to secure the funds needed to provide the public with adequate transportation facilities.

Those who opposed governmental control of railroad security issues stated their arguments substantially as follows:

I. Federal control would restrict railroad enterprise and foster paternalism in government by transferring too much detailed authority over the carriers from their responsible managers to public officials.

II. Federal control would not leave the railroads in a position to take advantage of favorable situations in the money market, since changes there are often sudden. A carrier could not act quickly in order to take advantage of some favorable opportunity if the securities to be sold had to have the approval of some public body in advance of sale. Such approval, it was held, could only be given after investigation, which would be likely to cause material delay.

III. Federal control is objectionable, it was held, because it would tend to deceive investors and thereby injure instead of benefit them. If the Interstate Commerce Commission should fix a minimum price for an issue of stocks or bonds it would thereby place its approval on their value. Many investors would buy securities because of faith in the Commission's judgment. It would soon develop, however, that the Commission made mistakes. There would be many cases where securities could not yield the returns the Commission expected or long command the price in the market that it had caused to be paid for them.

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[6] For excerpts from some of these investigations see Appendix C.

The exclusive power to regulate the issuance of securities of interstate railroads was finally entrusted to the Interstate Commerce Commission by the Transportation Act of 1920 (the Esch-Cummins Bill), giving it wider discretion in approving or disapproving a security issue than do the laws of most States. This made it much simpler for carriers to secure approval of security issues and prevented improper restrictions by State authorities.

While Section 20a—the section which grants the regulating authority to the Commission—definitely transfers the regulation of the securities of carriers in interstate commerce from the States to the Federal Government, where it properly belongs, it must not be considered as an enactment standing by itself, but rather as an integral part of a comprehensive system of regulation of interstate commerce and interstate carriers. Congress rightly considered that the most essential and vital object of regulation was to bring about an adequate transportation service, and that the credit of the carriers was the foundation upon which railroad service rested. In order that such credit might be reestablished after the period of Federal operation of the carriers and further strengthened and sustained Congress, in 1920, adopted several measures and among them was the regulation of security issues. Such regulation was, therefore, provided by Congress not solely for the protection of investors as originally suggested by the Interstate Commerce Commission and others; nor for the express purpose of avoiding conflicting State regulation; but as a necessary part of the constructive program whereby the Transportation Act of 1920 sought to build up the railway systems of the country so that they would be prepared to handle the increasing amount of traffic which was and is being offered them.

Chapter II

Section 20a of the Transportation Act of 1920[1]

Section 20a of the Transportation Act of 1920 is essentially legislation of a restrictive nature. The law provides that after June 28, 1920, it shall be unlawful for any carrier subject to the Act to issue securities or assume obligations or liabilities in respect of the securities of any other person, natural or artificial, even though permitted to do so by the authority creating the carrier corporation, unless such issue of securities or assumption of liability has been approved by the Interstate Commerce Commission, and then only to the extent indicated in their order.

The Commission is to grant its approval only if it finds that the assumption of liability or issue of securities meets the following conditions:

1. That it is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service.

2. That it is reasonably necessary and appropriate for the purpose for which issued or assumed.

The Commission has the power to grant or deny the applications of carriers as made or to grant them in part and deny them in part or to grant them with such modifications and upon such terms as the Commission may deem necessary. The Commission moreover has the power through the issuance of supplemental orders to modify the provisions of any previous order as to the purposes for which the securities heretofore authorized are to be used, thus retaining control of the carrier's actions with respect to securities the issuance of which has been authorized.

All applications for authority to issue securities or assume obligations must be made in the form and must contain such

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[1] For complete text of Section 20a see Appendix A.

information as the Commission prescribes. All applications, moreover, must be verified by a responsible officer of the railroad company.

Whenever securities described in any application for authority or certificate of notification as pledged or held unencumbered in the treasury of the carrier, shall subsequently be sold, pledged, repledged, or otherwise disposed of by the carrier the Commission must be notified of this action within ten days. The obvious intent of this provision is to enable the Commission to retain control of all securities up to the time when their sale to the public is finally authorized.

Upon receipt of an application for authority the Commission must give notice thereof and file a copy of such application with the Governor of each State in which the applicant carrier operates. The purpose of this provision is to give the railroad commissions, public service or utility commissions, or other State authorities an opportunity to be heard before the Interstate Commerce Commission upon the application.

The jurisdiction conferred upon the Commission by Section 20a is exclusive and plenary, and a carrier may issue securities and assume obligations or liabilities in accordance with the provisions of this section without securing approval other than as specified therein. The policy of the Commission seems to be to observe State statutes, if not in conflict with Federal statutes and if introduced in evidence, but in no case to take judicial notice of them. If the State statutes are in conflict with the Federal statutes they are disregarded. Further mention of this question of jurisdiction will be made in a later chapter.

The Act specifically states that nothing shall be construed therein to imply any guaranty or obligation as to the securities, which may be authorized, on the part of the United States. The reason for such a provision is obvious.

The provisions of Section 20a of the Act do not apply to notes maturing in not more than two years, aggregating together with other then outstanding notes of the same maturity—two years or less—not more than five per cent of the par value of the securities of the particular railroad corporation then outstanding. In the case of securities with no par value the fair market value

as of date of issue shall govern. Whenever a railroad corporation takes advantage of this provision and issues short-term notes it is required to give notification of such action to the Commission within ten days and should these notes later be refunded additional authority is required.

It is provided in the Act that the Commission shall require periodical or special reports from each carrier issuing securities, including short-term notes, which shall show, in such detail as the Commission may require, the disposition made of the securities and the application of the proceeds received therefrom. From this it is seen that the Commission is not only concerned with the issuance of securities but also that it has to do with the manner in which the proceeds are employed. This is of considerable significance since it makes the Commission—not the railroad management—the final judge as to the use to which new funds are to be put. If the power of the Commission to determine the purpose to which the proceeds of the sale of securities are to be put should be exercised to the extent of looking at the details of management, it would transfer an essential power from those well acquainted with the problems of individual roads—the boards of directors—to members of the Commission. This subject is considered more at length in another chapter.

Any security or any obligation or liability assumed by a carrier for which authorization has not been given is void and if issued or assumed contrary to any term or condition of an order of authorization it is also void; but no such security or obligation shall be rendered void because of any failure on the part of the applicant to comply with any provision of Section 20a relating to procedure and other matters preceding the entry of the order of authorization.

The innocent holder of a void security is protected provided he has acquired it in good faith and for value and in case any security which has been made void was directly acquired from the carrier issuing it, the holder may rescind the transaction and upon surrender of the security recover the consideration given for same.

A penalty consisting of a fine of not less than $1,000 nor more

than $10,000 or imprisonment for not less than one year or more than three years or both is provided for any director, officer, attorney or agent of a carrier who knowingly assents to or concurs in any issue of securities or assumption of obligations or liability forbidden by Section 20a; or any sale or other disposition of securities contrary to the provisions of the Commission's order or orders in the premises; or any application not authorized by the Commission of funds derived by the carrier through such sale or other disposition of such securities.

It is interesting to note at this point that since the passage of the Transportation Act of 1920 the Commission has, in its annual reports, made but two recommendations to Congress regarding Section 20a. In 1921 it suggested,

"that Section 20a of the Interstate Commerce Act be so amended as to indicate definitely the classes of electric railway companies subject to that section."

In 1922, 1923, 1924 and 1925 it made similar recommendation, as follows:

"That Section 20a of the Interstate Commerce Act be so amended as to include within its provisions electric railway companies engaged in the general transportation of freight."

Chapter III

The Administration of Section 20a by the Interstate Commerce Commission

The work of administering Section 20a of the Transportation Act was placed in the hands of Division Four, the Finance Committee, of the Interstate Commerce Commission. This committee issued a circular letter on June 26, 1920, instructing the carriers in regard to the issuance of securities, under Section 20a. On September 22, 1920, this circular letter was revised and on May 20, 1921, an order was issued especially applying to the matter of certificates of notification of the issue of notes under paragraph nine of Section 20a.

On May 25, 1922, the first complete order was issued by the Commission covering all applications which might be made under Section 20a and the reports required as to the disposition made of securities authorized by the Commission. This order was superseded on July 22, 1924, when some minor changes were made by the new order then issued. Since then two other amending orders have been issued, one January 17, 1925, and the other on June 7, 1926, but these have also dealt with minor matters. There is very little difference between the instructions of May, 1922, and those of July, 1924, except in connection with applications for the issuance of securities the proceeds of which are to be used for the acquisition of equipment. Under the order of July, 1924, such applications are required to go into greater detail in describing the equipment which it is intended to purchase. There are also minor changes in the instructions governing the filling out of the various forms required.

The order of July 22, 1924, as amended on January 17, 1925, and June 7, 1926, now governs the matter and provides that carriers nominally seeking to issue securities or proposing to sell, pledge, repledge, or otherwise dispose of securities nominally or conditionally issued or assumed, or actually to issue securities, or to assume obligations with respect to the securities of others, must make application to the Commission for authority accord-

ing to the rules and regulations set forth. All applications must be filed sufficiently in advance of the date of the proposed issue or assumption to give the Commission reasonable time, not less than thirty days, for the notices and investigations required by law. Applications must be made on the forms prescribed in the Commission's order.

The order defines the conditions under which capital stock and funded debt securities are considered to be "nominally issued" and the conditions under which the securities are considered to be "conditionally issued" and "actually issued" as follows:

Capital stock is considered to be nominally issued when certificates are signed and sealed and placed with the proper officer of the carrier for sale and delivery.

Funded debt securities are considered to be nominally issued when certified by trustees and placed with the proper officer of the carrier for sale and delivery.

Securities, as that term is defined in said section 20a, are considered to be:

Conditionally issued, when pledged or otherwise placed in some special fund of the obligor or issuing carrier.

Actually issued, when they have been sold to a bona fide purchaser for a valuable consideration.

Carriers are directed to show the following information in their applications:

(a) Exact corporate name of applicant.

(b) The name, titles and post-office address of the applicant's president, secretary, principal attorney, and executive officer by whom the application is signed, verified, and filed on behalf of the applicant.

(c) Under the laws of what Government, State or Territory applicant was organized and received its present charter. If applicant holds charters from, or is incorporated under, the laws of several States, or is authorized to do business in States other than that by which created, all the pertinent facts should be given.

(d) The name of each State in which the applicant carrier operates or proposes to operate.

(e) The nature of the application and the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or

liability in respect of the securities of any other person, natural or artificial.

(f) The facts relied upon by the applicant to show that the proposed issue or assumption.

1. Is for some lawful purpose within its corporate purposes and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and

2. Is reasonably necessary and appropriate for such purpose.

(g) At what price or prices, rate or rates, and upon what terms and conditions the securities are proposed to be sold or disposed of.

(h) How and by whom, or through whom, the securities are proposed to be issued, with details of all contracts, underwritings and other arrangements made or proposed to be made in connection with the issue.

The order specifies the exhibits which must be filed with the application among which are a copy of the applicant's charter and by-laws with amendments to date; copies of all resolutions of the directors authorizing the issue or assumption in respect of which the application is made; a copy of resolutions of stockholders or board of directors designating by name and for that purpose the executive officer by whom the application is signed, verified and filed on behalf of the carrier; opinion of counsel that the issue or assumption in respect of which the application is made meets the requirements of law and will be legally authorized and valid if approved by the Commission; a map of the carrier's existing lines and a map and profile of the line or lines to be constructed when the application involves such operations; and lastly a verified copy of the applicant's general balance sheet of recent date.

Applications for authority to issue securities subject to procuring subsequently the necessary authority from the board of directors and stockholders will not be considered by the Commission. Complete corporate authority as required must be furnished with the application.[1]

In the case of the issue or assumption of bonds or other evidence of indebtedness the carrier must file with its application a

[1] Securities of M. St. L. R. R.—86 I.C.C. 1.

copy of the mortgage or indenture by which secured or proposed to be secured.

If the application is with respect to the construction, completion, extension or improvement of facilities an engineer's report must be filed showing quantities required and estimated prices. In addition the report must show the total cost of the project distributed according to the primary accounts of the Commission's classification of investment in road and equipment. In addition one copy of each authority for expenditures must be filed. Proposed expenditures should be more than mere estimates of the cost of any particular piece of construction work as the Commission has ruled that—

> Under Section 20a we are required to make certain findings, among which is, that the issue is compatible with the public interest. The record does not show that public interest is or will be served by having bonds authenticated in respect of estimated proposed expenditures.[2]

If the application is with respect to the acquisition of property other than equipment it is sufficient for the carrier to give a general description as to the character and size of the property and its location. If the application concerns the acquisition of equipment, however, the carrier must, in addition to a general description, give details as to the particular type of locomotive, car, work equipment or floating equipment. Should the equipment be purchased second-hand the name of the former owner must also be shown and if rebuilt the information furnished must include: the original cost, a bill of material showing the reusable material, the price at which it has to be taken into the rebuilt unit, and the new material and labor used in rebuilding. If the equipment acquired has any special devices attached thereto which contribute materially to its cost these special devices must be listed separately.

If the application is with respect to the discharge or refunding of existing obligations a statement must be filed containing a full description of the securities, together with terms and condi-

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[2] Bonds of Kentucky and Indiana Terminal R. R., 99 I.C.C. 277.

tions of sale or other disposition including discounts and commissions, counsel fees and all other expenses.

If the application is with respect to the reimbursement of money expended from income or from other moneys in the treasury of the applicant not yet capitalized, a statement must be filed showing the periods during which the disbursements were made and their purpose, together with the amounts of the disbursements and all credits thereto. They must also be distributed according to the primary accounts of the Commission's accounting classifications.

If the application does not fall within one of the above mentioned classes a statement must be filed containing complete details of the purposes of the proposed issue or assumption.

The order lays down the procedure which governs the execution, filing and disposition of the carrier's application as follows: The application and supporting statements must be signed by a qualified executive officer. Six copies of the original and supporting papers must be filed with the Commission for its use as well as one copy for the governor of each State in which the applicant operates. Upon receipt of the application the Commission is required by paragraph (6) of Section 20a to notify the governor of each State in which the applicant operates and to file with him a copy of the application, at the same time making inquiry as to whether the governor or other appropriate authority of the State desires to be heard in the matter. As a matter of practice the Commission notifies the Public Service Commission and the Governor of each interested State. This is not required by law but is done in the interest of speed in the handling of the application. The State authorities have the privilege of opposing the application and in case this is done the Commission may hold hearings if it sees fit. Apparently no one else can object. The United States District Court for the Southern District of New York held on May 20, 1921 that an order of the Interstate Commerce Commission approving the issuance of securities was not subject to attack by a stockholder stating that—

> The owner of stocks or bonds of a railroad cannot petition to enjoin, set

aside, annul or suspend an order of the Interstate Commerce Commission approving an issuance of new securities since under the terms of the Act only authorities of the States through which the carrier passes can object to the issuance of new securities.[3]

At the same time it was pointed out by the Court that the Interstate Commerce Commission, on application by a carrier for authority to issue securities, need make only such investigation of the matter as it considers necessary, which investigation may be formal or informal.

The original application is checked in the office of the Commission in order to ascertain whether it corresponds to the regulations in all particulars. Much delay is often caused by having to send to the carrier for more copies of exhibits or for more information in general. After the application is checked, it is placed in the Commission's docket and thus forms part of the public record of the case. The remaining copies are used in various ways in the office of the Commission. One is used by the bureau of accounts for a check on such parts as may require it. Another is used by the Engineering Bureau, when necessary, so that a check as to cost of equipment or additions and betterments may be made. These bureaus render reports to the examiner to whom a particular application has been assigned to aid him in reaching a decision.

The examiner investigates the application and renders a report submitting his findings and suggestions as to what the Commission should do in the matter. Where necessary, he conducts hearings similar to those conducted in rate cases and according to the standard rules of procedure before the Commission. Upon conclusion of his examination and the hearings, he decides that the application should be granted or refused. In the latter case the practice is for the examiner to submit a proposed report in which he makes recommendations as to what should be done with the case. This proposed report is served on the carrier according to the Commission's rules of practice. The carrier is given the privilege of filing exceptions and arguing

[3] Miller v. United States, 277 Fed. 95.

the matter orally, before Division Four of the Commission, which then renders a decision. If this decision is contrary to the wishes of the applicant it may apply for a re-hearing which in this case is held before the Commission sitting as a whole and whose judgment is final. Each case is dealt with by itself and on its own merits.

A study of the work of Division Four of the Commission—the Finance Bureau—shows that they have been requested to authorize the issuance of nearly every kind of railroad security. The principal types, however, have been stocks, bonds, notes, equipment obligations and receiver's certificates. The amount of each of these classes authorized each year as well as the total of each from 1920–1926 and the grand total of all types of securities authorized during that period is shown in the table on page 25

The purposes for which these securities were authorized fall into the following general classes:

I. *The Acquisition of Property.* Securities representing a permanent addition to the facilities of the railroad issuing them such as for the purchase of rights of way and other real estate; the acquisition of the property or securities of related systems and the construction of new lines or extensions or their completion. This classification would also include securities issued for the purpose of obtaining basic equipment such as rolling-stock and for the improvement of facilities or properties.

II. *For Certain Financial Purposes.* This would include securities issued for the following purposes:

(a) As collateral security for notes that may be issued under paragraph (9) of Section 20a. (b) For delivery to the Secretary of the United States Treasury as security for a loan from the United States under Section 210 of the Transportation Act. (c) In payment of sinking-fund advances made by others for the redemption of general mortgage bonds. In exchange for bonds of certain subsidiaries. In satisfaction, release or assignment of judgments in connection with the consummation of a plan of financial readjustment. To be held in the treasury of the applicant subject to the orders of the Commission. To cover current indebtedness now held in open account.

SECURITY ISSUES AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION, 1920–1926

[1]YEAR	STOCKS	BONDS	NOTES	EQUIPMENT OBLIGATIONS	RECEIVER'S CERTIFICATES	TOTAL
[2]1920		$88,361,486.00	$13,997,059.00	$17,120,000.00	$3,600,000.00	$123,078,545.00
1921	$242,657,500.00	1,276,761,616.39	98,402,194.79	92,279,013.24	5,501,300.00	1,715,601,624.42
1922	110,894,175.00	622,118,300.00	24,941,547.23	125,910,490.00	5,855,198.00	[3]889,719,710.23
1923	359,558,050.00	545,202,209.00	37,808,506.00	261,898,156.00	7,587,862.00	[4]1,213,054,783.00
1924	201,474,970.00	1,262,855,999.66	69,977,840.28	253,658,593.76	7,060,000.00	1,795,027,403.70
1925	45,217,499.00	678,424,811.07	40,297,029.41	140,048,514.58	3,790,000.00	907,777,854.06
1926	124,650,103.23	572,657,997.00	26,120,892.58	134,917,970.00	4,281,900.00	862,628,862.81
Total...	1,084,452,297.23	5,046,382,419.12	311,545,069.29	1,025,832,737.58	37,676,260.00	7,506,888,783.22

[1]The fiscal year of the Interstate Commerce Commission runs from November 1st to October 31st.
[2]June 28th to November 1st.
[3]In addition bonds amounting to 69,760,500 French francs were authorized.
[4]Including investment certificates to the amount of $1,000,000.00.

III. *The Maintenance of the Carrier's Services.* In this class is found securities issued for use as cash working capital and to pay interest and dividends or to pay general operating expenses; to pay for supplies necessary for continued operation or for repairs to roadway, station buildings and equipment; and to pay back payments due employees under awards of the Railroad Labor Board.

IV. *In connection with the refunding, exchanging, redeeming, purchasing, retiring, or paying of certain underlying bonds or other funded debt or obligations of the parent or subsidiary company.* This purpose seems to be self explanitory.

V. *For the reimbursement of the carrier's treasury for liabilities incurred or advances made from income, or from other money in the treasury, not secured by the issuance of stocks or bonds.* In other words the capitalization of investment in road and equipment such as for additions and betterments and to provide for further improvements; for the construction of new lines and for the expenses of organization. Under this class two kinds of securities are found: 1. Securities issued to be sold and the money deposited in the carrier's treasury. 2. Capital stock to be distributed in place of a cash dividend.

The statute requires that carriers must not only secure authorization for the issuance of securities but likewise must secure the Commission's approval of the assumption of obligations or liability with respect to the securities of others. The authorized assumptions deal mostly with the relations between a parent corporation and its subsidiaries: (a) As a guarantor of first mortgage bonds to be issued and sold by a union station or terminal company. (b) As a guarantor of bonds to be issued by a subsidiary in connection with the funding of advances made by the parent company. (c) As guarantor of the payment of the principal and interest of the mortgage bonds of a subsidiary. (d) As guarantor of bonds of a subsidiary issued to refund maturing securities. (e) In connection with the equipment-trust certificates of a subsidiary. (f) To assume as lessee the obligation of paying, as additional rental, the interest and sinking fund charges on certain bonds for which the leased road is responsible.

After an issue of securities has been authorized by the Commisson it keeps close check upon the disposition made of them and the application of the proceeds as required by paragraph ten of Section 20a. The carriers are required to report on these matters every six months. These reports are filed and referred to when new applications are received. Frequently information contained in the filed reports influences the Commission's decision with respect to the issuance of new securities for which application is made. For example; a carrier requested permission to issue certain notes in connection with the procurement of some equipment. In granting its approval to the issuance of these notes the Commission stated—

> By our order of August 22, 1924, in Securities of Maryland & Delaware Coast Ry., 90 I. C. C. 576, we authorized the applicant to issue $300,000 of the bonds at not less than 80 per cent of par and accrued interest, for the purpose of rehabilitating and equipping its line of railroad. It appears that $112,500 of those bonds remain unsold. Our order herein will provide that the applicant shall retire the proposed notes when it has sold bonds in an amount sufficient to provide funds for that purpose.[4]

The provision in the act that any security issued without the authority of the Commission is void, has been very strictly upheld and they have stated that securities of any kind issued and delivered without the authorization as provided by the statute having been first obtained "are, by the plain terms of the act, void ,and no means are provided for validating them." They even go so far as to say that such securities "are not obligations of the applicant and may not be carried on its books as such."[5] This even applies to notes delivered by a subsidiary to a proprietary company.[6] In one case it appeared that the applicant carrier had already issued certificates for a certain number of shares of common capital stock in exchange for working capital and a certain line of railroad, and six shares as director's qualifying shares. It was stated that this action was

[4] Notes of Md. & Del. Coast Ry., 99 I.C.C. 587.
[5] Bonds of C. & N. W. Indiana Ry., 67 I.C.C. 609.
Operation of Line by Craig Mt. Ry., 79 I.C.C. 60.
[6] Notes of St. L. S. F. & T. R. R., 70 I.C.C. 827.

taken on the theory that the applicant was not engaged in interstate commerce and was therefore not subject to the provisions of Section 20a of the Act. Upon examination of the applicant's charter as is the custom of the Commission, it was found that the applicant was authorized to engage in interstate commerce. The Commission, therefore, ordered that the stock issued without its prior authority be cancelled before it would authorize the issue of the stock requested in the application.[7]

In another case the applicant stated that it had previously issued certificates for twenty shares of stock as director's qualifying shares without authorization from the Commission. The Commission ordered that—

> The stock authorized herein may not be issued unless and until the certiffcates heretofore issued without our authorization, are recalled and cancelled.[8]

It seems to be the policy of the Commission in all cases where securities have been issued without its prior authorization to require that they be recalled and cancelled rather than to grant authorization at a later date: except where informal arrangements for a prior offering have been made in order to avoid delay in taking advantage of market conditions.[9]

The Commission has found it necessary to take disciplinary action against two carriers and against two officers of one of them under paragraph (11) of Section 20a[10] but as yet none of these cases have been finally disposed of.[11]

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[7] Stock of Reader R. R., 105 I.C.C. 277.
[8] Stock of Port Angeles W. R. R., 105 I.C.C. 224.
[9] Securities of M., E. F. & S. E. Ry., 86 I.C.C. 497.
Securities of N. C. Ry., 99 I.C.C. 787.
Stock of Hutchinson & Northern Ry., 111 I.C.C. 571.
[10] United States v. Alaska Anthracite Railroad Co., District Court, Southern New York, October 9, 1925, indictment charging issuing bonds unlawfully. At the same time indictments were returned against C. D. Davis and G. V. Whittle, officers of the road charging concurring in unlawful issue of bonds.
United States v. Kansas City Southern Ry. Co., District Court, District of Columbia, June 26, 1925, indictment charging false issuance of note in not filing notice with I.C.C.
[11] Letter to the writer from the Interstate Commerce Commission dated July 29, 1926.

Chapter IV

The Jurisdiction of the Commission and the Conflict With State Authorities

One of the first problems that faced the Commission after Section 20a of the Act became effective, was the question of State rights. Some carriers, in filing applications for permission to issue securities or assume obligations, had ignored the State authorities. Certain states contended that since the applicant in such cases was a railroad corporation organized and existing under their laws, the Commission had no jurisdiction and that the applicant not being a Federal corporation or creature of the Federal government, was not answerable to the Federal government in any way so far as its security issues were concerned.[1] The following very decisive statement was made by the Commission to settle this point:

> It is well settled that common carriers by railroad engaged in interstate commerce, although organized and existing as state corporations, are nevertheless subject to the Commission's jurisdiction. Paragraph 7 of Section 20a of the Act, confers exclusive and plenary jurisdiction upon the Commission to authorize the issue of securities by such carriers and it is provided therein that a carrier may assume obligations and liabilities or issue securities without securing the approval of other than the Commission. Paragraph 2 of Section 20a provides that it shall be unlawful for a carrier by railroad to issue securities, even though permitted by the authority creating it, unless and until, and then only to the extent that the Commission authorizes such issue. Any security for the issue of which the Commission's authority is required, is void without said authority having been first obtained.[2]

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[1] Notes of C. C. C. & St. L. Ry., 65 I.C.C. 764.
Notes of N. Y. C. Ry., 65 I.C.C. 787.
Notes of Michigan Central R. R., 65 I.C.C. 790.

[2] Bonds of N. Y. C. Ry., 65 I. C. C. 534.
Bonds of Michigan Central R. R., 65 I. C. C. 544.
Bonds of C. C. C. & St. L. Ry., 65 I. C. C. 556.
Notes of Zanesville & Western Ry., 65 I. C. C. 559.
Note of Kanawa & Michigan Ry., 65 I. C. C. 562.
Note of L. E. & W. Ry., 65 I. C. C. 565.
Note of Cincinnati & Northern Ry., 65 I. C. C. 568.
Equipment Trust Certif. C. & N. W. Ry., 67 I. C. C. 198.
Capital Stock of D. & T., S. L. R. R., 70 I. C. C. 322.

Another contention of some State Commissions, particularly that of Texas, was that the applicant carrier was subject primarily to the jurisdiction of the State commission and that the issue of the proposed securities should not be authorized by the Interstate Commerce Commission until that commission (the State Commission) had determined that the issue would not be in violation of the laws of the State. It was urged that the Interstate Commerce Commission entertained no jurisdiction in the matter prior to such determination by the State Commission, or, in the event that jurisdiction was entertained, that the order be so conditioned as to assure compliance with any applicable provisions of the laws of the State in question.[3] The following statement was made in answer to this argument:

> Upon application to us for authority to issue securities by any carrier, subject to the provisions of section 20a of the Interstate Commerce Act, it is our duty to proceed with the investigation, required by the statute, of the purposes and uses of the proposed issue and the proceeds thereof. Appropriate authorities of each State in which the applicant carrier operates, have the right to make such representations before us as they may deem just and proper for preserving and conserving the rights and interests of their people. Following our investigation, we are by order to grant or deny it in part, or to grant it with such modifications and upon such terms and conditions as we may deem necessary or appropriate to the finding made upon our investigation. By paragraph (7) the jurisdiction conferred upon us by Section 20a is expressly declared to be exclusive and plenary.
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> We likewise believe that a condition intended to make the exercise of authority granted us dependent upon the subsequent investigation by the State commission is not a condition such as we are authorized to impose by paragraph (3) of Section 20a, because plainly incompatible with the provisions of paragraph (7).[4]

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[3] Bond of R. G., E. P. & S. F. R. R., 94 I. C. C. 775.
Bond of S. P. & S. F. Ry., 94 I. C. C. 780.
Bond of T. & G. Ry., 94 I. C. C. 805.
Bond of Cane Belt R. R., 94 I. C. C. 821.
Bond of G., B. & G. N. Ry., 99 I. C. C. 18.
Bond of J. & E. Ry., 99 I. C. C. 31.
Bond of C., S. S., & L. V., R. R., 99 I. C. C. 101.
Bond of G., C. & S. F. Ry., 99 I. C. C. 427.

[4] Bond of N. Texas & Sante Fe Ry., 94 I. C. C. 747.

The Commission has adopted a very reasonable attitude in taking into consideration the laws of the interested States and sometimes requires changes to be made in the proposed plan of financing so as to comply with those laws.[5] For example: the application of the Pittsburgh & West Virginia Railway Co., for authority to issue capital stock at less than par, disclosed that the laws of Pennsylvania provide, in substance, that capital stock of railway companies must be issued at not less than par, either in cash or in value of property or services exchanged. In this case the Commission held:

> Without determining to what extent our power with respect to an issue of securities is affected by the limitations of a State regulation, it is our thought that in this matter we should be governed by the policy of the State law.[6]

But, on the other hand where the objection voiced by the State authorities, rests only upon the wishes or opinions of such authorities the Commission does not give the matter so much consideration, although a hearing is held when necessary as required by law, and does not hesitate to refuse to accept the suggestions made. This is particularly so when nothing can be found in the carrier's charter or the laws of the State or States concerned to substantiate the claims of the State Commissions.[7]

As an administrative body it is not for the Commission to question the authority of Congress, but to act in accord with its evident intent, leaving the courts to determine the validity of their action. The Transportation Act of 1920 is framed in plain language and contains no condition, either expressed or necessarily implied, that its administration is subject to the limitations of State authority. The last word will not be said on this question, of course, until the matter is brought to the United States Supreme Court. This has not as yet been done but may eventually occur. The rule which has governed before; that when the Federal Government has moved into an

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[5] Securities of St. L., S. F. Ry., 79 I. C. C. 323.
D. & R. G. W. Reorganization, 82 I. C. C. 745 and 90 I. C. C. 141.
Boston & Maine Readjustment, 111 I. C. C. 457.
[6] Capital Stock of Pittsburgh & W. Va. Ry. Co., 82 I. C. C. 704.
[7] Securities of Colo. & Southern & Subsidiaries, 86 I. C. C. 213.

area which, by the Constitution, it has a right to control, it will be held to have taken entire authority over that area; will no doubt be followed here. As an element of the power to "regulate commerce" this assumption of control over railroad securities should, and probably will, be held to have removed the States from such control as they previously exercised. This was, without doubt, the intention of the Act.

Moreover, the United States Supreme Court in various decisions since the passage of the Transportation Act of 1920 has recognized that act as a new departure in Federal legislation as related to the railroads of the country; marking the beginning of a constructive policy looking to guarding the interests of the railroads as well as those of the shippers and other users of railroad services.[8] In the case of the Dayton Goose Creek Ry. vs. the United States et. al. the Court said among other things:

> The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give owners of railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose it puts the railroad systems of the country more completely than ever, under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by the proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to insure a fair return upon the properties of the carriers engaged * * . When the adequate maintenance of interstate commerce involves and makes necessary on this account the incidental and partial control of intrastate commerce, the power of Congress to exercise such control has been clearly established.

We can also go back to the decision of the court in the important Minnesota Rate Cases[9] in which the court said:

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[8] Wisconsin R. R. Commission vs. C. B. & Q. R. R. Co., 257 U. S. 563.
New England Division Case, 261 U. S. 184.
Dayton Goose Creek Ry. Co. vs. The United States et al., 263 U. S. 456.

[9] 230 U. S. 399.

The authority of Congress extends to every part of interstate commerce and to every instrumentality or agency by which it is carried on.

This case dealt with rates, to be sure, but it is not possible to exclude the important matter of railroad capitalization, in considering the instrumentalities or agencies necessary to be controlled by Congress in the interest of the transportation requirements of the whole country.

In at least one instance a State Supreme Court—Wisconsin—has upheld the contentions of the Commission and has stated that:

It was the intent and meaning of Section 20a of the Transportation Act of 1920 that Congress should assume exclusive control over such securities and that Section 20a is constitutional.[10]

In addition to the problem of conflict between State and Federal jurisdiction the Commission has been called upon, from time to time, to make statements regarding certain financial matters as to whether they came within their jurisdiction or not; the carriers having apparently adopted the axiom—"Better be safe than sorry." It has been pointed out that the Commission has no jurisdiction over the assumption of liabilities or the issue of securities by a carrier which is a common carrier by water and not a "common carrier by railroad" or otherwise a "carrier" within the meaning of Section 20a of the Act.[11] Also that a transfer of stock from one party to another does not fall within the purview of Section 20a and that authorization for the same by the Commission is not required.[12]

Sometimes carriers will apply for authority to execute mortgages under which bonds are to be issued. In such cases the Commission states:

It does not appear that the execution of the proposed mortgage comes within the purview of Section 20a. Our consideration of the application will

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[10] Minneapolis, St. P. & S. S. M. Ry. vs. Ry. Comm. (Wis), 197 N. W. 352.
[11] Securities of Seaboard-Bay Line Co., 71 I. C. C. 501.
[12] Stock of Valley & Siletz Ry. ,70 I. C. C. 556.

therefore be confined to the request for authority to issue the proposed bonds (or other securities).[13]

On the other hand, the Commission has had to point out to carriers that it has jurisdiction over the issuance of short-term promissory notes in renewal of other notes for like amounts.[14] Also that the delivery of dollar bonds in exchange for sterling bonds in a refunding operation involves the issue of securities within the meaning of Section 20a and therefore comes within their jurisdiction.[15] It has also been stated that an increase in the dividend rate on preferred stock is a matter within their jurisdiction under Section 20a.[16] Other matters in connection with the issuance of securities or the assumption of obligations over which the Interstate Commerce Commission exercises jurisdiction will be more fully discussed in later chapters, so need not be mentioned here.

The requirement in the statute that the issue of securities must be for a lawful object "within its corporate purposes," seems to recognize State authority so far as it is expressed in the charter of the company. An application for a security issue to be used for purposes not contemplated in the charter granted by the State, even though the purpose were a lawful one, would apparently have to be denied by the Commission. The practice seems to be to examine the charter of the railroad company, including in most cases the general incorporation act under which the charter is granted, most carefully for the purpose of ascertaining whether the issuance of the securities requested is within the corporation's power or is ultra vires. In some cases the Commission has required a carrier to amend its charter to provide for the proper issuance of certain securities which are part of a general plan for financing.[17]

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[13] Bond of Santa Fe & Los Angeles Harbor Ry., 94 I. C. C. 801.
Bond of Eldorado & Sante Fe Ry., 94 I. C. C. 831.
Bond of Buffalo & N. W. R. R., 99 I. C. C. 27.
Bond of Barton County & S. F. Ry., 99 I. C. C. 23.
Bond of Jasper & Eastern Ry., 99 I. C. C. 31.
Bond of Grand Canyon Ry., 99 I. C. C. 151.

[14] Notes of Pittsburgh & Lake Erie R. R., 67 I. C. C. 94.

[15] Bonds of Union Pacific R. R., 65 I. C. C. 735.
Bonds of Oregon, Wash. Ry. & Nav. Co., 65 I. C. C. 739.

[16] Increase in Dividend Rate on Pfd. Stock by Virginian Ry., 72 I. C. C. 473.

[17] Securities of Townsville R. R., 105 I. C. C. 263.
Control of Securities El Paso & S. W. Sub., 86 I. C. C. 122.

Chapter V

Application of the Law to Practical Problems of Railroad Financing

The ways in which the provisions of Section 20a have been applied to the problems arising in the issuance of various types of railroad securities may now be considered. In passing upon the applications of carriers it is the practice of the Commission to base their findings in each case upon the particular circumstances and facts presented therein, which may vary from those of every other case. Their decision in one case, therefore, may not fairly be taken as a precedent in any particular later case but they have stated certain standards of financial conduct which the carriers are wise to adhere to in presenting applications.

The Question of Public Interest

The statute states that the issue of securities must, among other things, be "compatible with the public interest." This point is watched very closely by the Commission and in applying the test they have laid down several rules the first of which is that—

> The public interest in the financing of railroads requires that they be considered as a unit. It is not in the public interest that the parts of a system be permitted to increase their capitalization piecemeal where consideration of the circumstances of the system as a whole might, and probably would, warrant no such increase.[1]

The second consideration is that it would not be compatible with the public interest for a carrier to issue securities, the proceeds of which were to be invested in property not to be held for or used in the service of transportation.[2] The third is that—

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[1] Stock of N. J., I. & I. R. R., 86 I. C. C. 718.
[2] D. T. & I. Investment Certificates, 82 I. C. C. 411.

The public interest requires that before an issue of securities by a carrier is authorized, the probability of earnings sufficient to pay costs of operation and of fixed charges be reasonably established, with some surplus for dividend and other purposes.[3]

In connection with this matter the Commission has stated that they are not governed solely by the provisions of mortgages or other instruments executed by the carriers, but by the financial situation with respect to any particular carrier which might result were the securities issued contrary to the public interest.[4] Moreover they do not confine their investigation and consideration to the effect of the proposed issue upon the carrier immediately involved. In any application to them for authority to issue securities they feel bound to measure the proposal by the test of public interest in whatever phase that interest may appear to be affected. They, therefore, take into consideration the question whether any carrier, besides the one making the application, is likely to be affected, beneficially or adversely, by the proposed issue. Sometimes a consideration of the relationship existing between the applicant and other carriers militates in favor of the proposed course of financing and sometimes against it.[5]

Capitalization

The Commission is very careful to guard against even an appearance of overcapitalization.[6] In several cases it has stated that the—

Issue of the full amount of capital stock for which authority is sought, is

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[3] D. & R. G. W. Reorganization, 90 I. C. C. 141.
Securities of La. Ry. & Nav. Co. of Tex., 99 I. C. C. 357.
[4] Bonds of Seaboard Air Line Ry., 94 I. C. C. 311.
[5] Stock of N. J., I. & I. R. R., 94 I. C. C. 727.
[6] Authorities do not agree on what should be considered the proper basis for railroad capitalization. A generally accepted basis, however, is that based on the investment in the property whether it be contributed by investors or the investment in the property (including in the latter the reinvestment of profits). On this subject see—Jones, E., *Principles of Railway Transportation*, pp. 309–311; also Bonbright, James C., *Railroad Capitalization*, pp. 64–98.

denied where it would result in excess of stock over the total investment in road and equipment.[7]

Where the expenditures proposed to be capitalized do not equal the amount of securities for which authorization is sought, the Commission will authorize the issuance of that amount of bonds equal to the expenditures actually made and will defer action on the remaining amount of bonds until the applicant shows that additional expenditures have been made.[8] In once case the Commission has stated that it is—

> Improper to authorize the purchase of one carrier by another at any sum in excess of the actual cost of building the line or to permit the purchasing carrier to write into its investment accounts, any sum in excess of such cost.[9]

They have also stated that—

> Aside from the question whether a carrier, in the public interest, should be permitted, in order to secure traffic from a competitor, to buy control of another at a price greatly in excess of the value of the physical property involved, the Commission must be convinced that the price to be paid is a reasonable one.[10]

The Commission's opinion with respect to the issuance of securities representing a permanent addition to the facilities of the railroad issuing them, is well stated as follows:

> Where bonds are to be issued by carriers in respect of expenditures for additions and betterments, the public interest would seem to require that the amount of bonds does not exceed the amount of additional assets of a capitalizable nature, as shown by the net amounts charged to appropriate investment accounts in conformity with the accounting classification prescribed by us. It would not be in the public interest to authorize the issue of bonds in

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[7] Stock of Interstate R. R., 82 I. C. C. 359.
Securities of P. & W. Va. Ry., 76 I. C. C. 663.

[8] See the following cases—Bonds of N. & W. Ry., 94 I. C. C. 348; Bonds of N. Y. C. R. R., 105 I. C. C. 402; Securities of D. C. & S. Ry., 99 I. C. C. 783; Bonds of C. G. W. R. R., 86 I. C. C. 541; Bonds of Tennessee Ry. Co., 111 I. C. C. 362.

[9] Acquisition of Control of B. & C. M. by N. P. Ry., 70 I. C. C. 328.

[10] Control of Dayton Goose Creek Ry. by N. O. T. & M. Ry., 72 I. C. C. 377.

espect of any part of expenditures, which, by reason of compliance with our accounting requirements, are shown to have been in the nature of the replacement of property retired or destroyed.[11]

In one case the carrier argued that the requirement of compatibility with the public interest was fully met by a showing that the physical value of its property equalled or exceeded a proposed capitalization; and that even though it might appear certain that the proposed capitalization would soon result in a receivership, the Commission was required by law to approve an application for a proposed issue of securities where such a showing is made. In other words, the carrier contended that the law contemplated that the Commission would consider only the element of physical value of the property in determining what should constitute proper capitalization and that such elements as commercial value, earning capacity, etc., should be disregarded. To this argument and contention the Commission rightly replied that they were clearly refuted by the plain language of section 20a of the Act, in that security issues were to be authorized only where it is found that such issue—

(a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance of the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

Also paragraph (3) of Section 20a provides that—

The commission shall have power by its order to grant or deny the application as made, or grant it in part and deny it in part, or grant it with such modifications and upon such terms and conditions as the commission may deem necessary or appropriate in the premises.[12]

In the authorization of equipment-trust certificates a somewhat different problem is presented to the Commission than in

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[11] Bonds of Seaboard Air Line Ry., 94 I. C. C. 311.
[12] Securities of La. Ry. & Nav. Co. of Tex., 99 I. C. C. 357.

the case of other types of securities. This is particularly true where the equipment covered by a particular issue of certificates is both new and rebuilt. In this connection the Commission has stated that the authority sought to issue such certificates was granted, in one case, since the value of the equipment constituting the security for the trust certificates was considered equal to the amount of certificates proposed to be issued. However, if a permanent capitalization was contemplated by the issue of stock and/or bonds in refundment of the trust certificates, such capitalization would be limited to the net increase in capital account, determined by deducting from all proper charges for the acquired equipment the credits for that retired.[13] When the equipment is entirely rebuilt the Commission has held that—

> Under our accounting regulations the charge for renewed equipment shall be the cost at current market prices for new labor and material used in rebuilding, plus the appraised value of the reused parts therein, but not exceeding the original cost of such reused parts and the total cost not to exceed that of new equipment of similar type, equal capacity, and equal expectation of life in service.[14]

The Commission has also held that as a basis for the issuance of equipment-trust certificates the equipment should not be taken at the appraised value, but at the depreciated book value.[15]

When the issuance of notes by a carrier is involved, it has been held that—

> In authorizing a carrier to issue notes, it is to be understood that the commission does not pass upon the question as to whether any items comprising the basis for the proposed issue are of such a character as to be capitalizable, should the carrier hereafter seek authority to refund, in whole or in part, any of such notes by the issue of stocks or bonds.[16]

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[13] Seaboard Air Line Eq.-Tr. Series X, 94 I. C. C. 455.
[14] *Ibid.*
[15] Equipment-Trust Certificates S. D. & A. Ry., 71 I. C. C. 29.
R. I. Equipment Trust 1925 Series N., 99 I. C. C. 581.
[16] Notes of S. D. & A. Ry., 82. I. C. C. 293.

In the case of a refunding operation a carrier which receives money in excess of the amount necessary for the payment of the maturing securities, should use such excess, in most cases, for capital purposes which will "not be hereafter used as a basis for capitalization."[17] Where a refunding operation would involve the continuance of very heavy charges the Commission usually denies the authorization, holding it as not compatible with the interests of either the applicant or of the public, particularly where the record discloses no facts tending to show that the prospective earnings or the operating ratio of the applicant will be likely to improve.[18] The Commission does not permit the refunding of short term notes representing borrowings to meet interest charges or expenses of operation. Such notes, it is held, are not subject to permanent capitalization and must be eventually paid from income.[19]

The question frequently arises as to just what assets may be considered as capitalizable by means of a stock dividend or through the sale of securities, the proceeds of which are to be turned over to the carrier's treasury. The Commission has had occasion to make some very plain statements in this connection. "Capitalizable assets" are defined as those which have been provided and which are intended for continuing productive use in the service of transportation.[20] The nature of the assets which a carrier seeks to capitalize is, therefore, material.

Numerous cases involving the issuance of stock dividends have been before the Commission and their opinion in the matter may be stated as follows: In the first place, the contention sometimes made by carriers that they have the absolute legal right to distribute their entire surplus, regardless of the nature of the assets of which it consists, as a stock dividend is not recognized by the Commission.[21] In the second place, before authority is granted for the issuance of capital stock as a dividend, the evidence must establish satisfactorily that the

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[17] Bonds of N. Y., N. H. & H. R. R., 94 I. C. C. 634.
[18] Bonds of Texas Short Line Ry., 67 I. C. C. 400.
[19] Notes of Wisconsin & Northern Ry., 67 I. C. C. 14.
[20] R. F. & P. Dividend Obligations, 79 I. C. C. 465.
[21] Securities of L. & N. Ry., 76 I. C. C. 78.

value of the applicant's road and equipment plus a proper sum for working capital and for materials and supplies, exceeds or equals the present capitalization of the applicant. Unless this is shown, the right to issue a stock dividend will be denied.[22] In fact the Commission has gone so far as to say that—

> To render a proposed issuance of stock for distribution as a dividend compatible with the public interest within the meaning of the statute, a substantial surplus should remain uncapitalized as a support for the applicant's credit, providing for emergency needs, offsetting obsolescence and necessary investments in non-revenue producing property, and serving as a general financial balance wheel.
>
> The maintenance of a substantial uncapitalized surplus reserve is a direct benefit to stockholders. It maintains the market value of their stock and protects not only their dividends but their pro rata share of the assets available on dissolution.
>
> Authority to issue stock can not be claimed as a right. It is within the Commission's discretion, subject to the limitation that it shall grant authority only if it is able to make the necessary finding as provided in Section 20a of the Act. If a carrier is lawfully entitled to earn a return upon the fair value of property acquired out of surplus, this right will persist, whether or not a stock issue is permitted.[23]

In the third place, the Commission has stated that the authority to issue stock dividends should not be requested by a carrier until the expenditures, which it is desired to capitalize, have been actually made. Authority will not be granted to a carrier to issue stock dividends from time to time as further expenditures are made from income for additions and betterments or for other purposes.[24]

In the only case involving the issuing of mortgage bonds as a dividend, which has as yet come before the Commission, the Chicago, Burlington & Quincy Railway sought to issue $80,000,000 first and refunding mortgage bonds which it appeared would be used solely for dividend purposes. In other words, they would be distributed among the stockholders, chief of

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[22] *Ibid.* Capital Stock of D. & T. S. L. R. R., 70 I. C. C. 323.
[23] Stock of D. L. & W. R. R., 67, I. C. C. 426.
[24] Securities Application of D. & T. S. L., 70 I. C. C. 322.

whom were the Great Northern and the Northern Pacific Railroads. These roads were then to dispose of bonds to the public in connection with the refinancing of their purchase of a majority of the Chicago, Burlington & Quincy stock made some twenty years previously. Authorization was denied by the Commission on the grounds that the carrier had no need for the bonds and that it could advantageously issue all the stock reasonably required for its needs. Moreover, it was felt that the applicant should not be permitted to increase its fixed charges without a showing of resulting benefit to it.[25]

Frequently a carrier desires to capitalize investments in stock or bonds of other corporations and in this connection the Commission has made the following statement:

> Ordinarily a carrier may properly capitalize investments in the stock of another corporation where, and only where, the latter is the owner of operated railway property and the carrier's holdings are sufficient and essential to give it control of that corporation and it appears that such control will probably be permanent.[26]

The above is consistent with their views as expressed in other cases where it was held that a carrier could not be permitted to issue capital stock against its investments in non-operating properties, where no reasons for acquiring or holding these properties were stated and no present or contemplated future use of them in connection with the carrier's transportation service was shown. The Commission stated that stocks of advertising, mining, timber and land companies, United States government bonds and certificates of indebtedness, municipal bonds and other industrial bonds are flexible assets which they thought improper to permit the applicant to capitalize. If it should be thought desirable to distribute the portion of the surplus invested in these securities among the stockholders, the applicant could apportion the securities themselves or distribute the proceeds of their sale. It was further stated that—

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[25] Stock of C. B. & Q. R. R., 67 I. C. C., 156.
[26] Securities of L. & N. R. R., 76 I. C. C. 718.

Such securities are neither property used in rendering the public service nor an assured part of any surplus.[27]

This theory of the Commission appears to overlook the fact that such a surplus tends to strengthen the credit of the carrier possessing it and so to aid it in maintaining an adequate transportation system for the service of the public.

The Commission's definition of capitalizable assets when strictly adhered to sometimes leads to an unreasonable interpretation, for example; in the case of the Oahu Railway and Land Company, a corporation chartered as both a railroad and a land development concern, capitalization was refused in respect to an appreciation in the value of the railroad property "in the absence of a realization of the appreciation by sale or otherwise," and at the same time the value of all land holdings not used for the purpose of transportation was excluded in determining the amount of surplus which could be capitalized.[28] In other cases the Commission has declined to permit capitalization of items held for depreciation and insurance in casualty reserves the establishment of which implies that they will be needed for future replacement;[29] nor can deferred and current assets (other than cash and materials and supplies), such as demand loans, time drafts, deposits, rents receivable, etc., be regarded as capitalizable since such assets are to be regarded as pertaining to the operations of the carrier. In all instances cash and materials and supplies are regarded as representative of working capital.[30]

Despite the refusal of the Commission to permit certain assets to be capitalized, it is interesting to note that such action need not affect the right of a carrier to earnings. Under the present law the return which a railroad corporation is permitted to earn is based on the value of its property "held for and used by it in the service of transportation" and not upon capitaliza-

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[27] Stock of D. L. & W. R. R., 67 I. C. C. 426.
Securities of L. & N. R. R., 76 I. C. C. 718.
Stock Dividend of Oahu Ry. & Land Co., 86 I. C. C. 137.
[28] *Ibid.*
[29] Securities of St. L., S. F. Ry., Etc., 86 I. C. C. 818.
[30] Stock Dividend Oahu Ry. & Land Co., 86 I. C. C. 137.

tion.[31] Therefore, as the Commission has intimated from time to time, if a carrier is lawfully entitled to earn a return upon the fair value of property which may be acquired out of surplus, this right will persist whether or not capitalization of such assets is permitted.

The Commission has not confined itself to saying only what may not be considered as a basis for capitalization, but have at times stated what assets are acceptable for that purpose as follows: Parcels of real estate acquired by a carrier for railroad purposes and portions of which are in partial use, and all of which the carrier intends ultimately to use;[32] likewise it has been held that, in order to encourage the construction and use of union stations and joint terminals, a carrier may properly be allowed to capitalize its actual holdings in the stocks of such companies, whether or not such holdings give it control.[33] In addition to the capitalization of investment in road and equipment, a carrier may also properly capitalize a reasonable amount of working capital, including therein a sum sufficient to enable it to carry an adequate stock of materials and supplies.[34] It has also been held that where funds represented by cash and special deposits set aside for the purchase of equipment are beyond the carrier's control, except for the purpose for which set aside, they may be properly regarded as capitalizable assets.[35]

The Type of Security to be Issued

The decision as to the particular type of security which shall be issued in connection with any proposed plan of financing—whether stock or bonds—is generally left to the carrier's board of directors. Within the past year, however, the Commission has taken occasion to point out the dangers inherent in the issuance of large amounts of terminable mortgage bonds with foreclosure rights by railroads since they naturally are not in a

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[31] Section 15a Transportation Act of 1920.
[32] R. F. & P. Dividend Obligations, 79 I. C. C. 465.
[33] *Ibid* and Securities of L. & N. Ry., 76 I. C. C. 718.
[34] So. Ga. Ry. Capital Stock, 86 I. C. C. 713.
Securities of St. L. & S. F. Ry., Etc., 86 I. C. C. 818; 79 I. C. C. 92.
[35] *Ibid.*

position to return capital once it has been invested; but on the contrary, are always engaging more capital. When a railroad, therefore undertakes to pay a considerable sum of money at a fixed date under the terms of a mortgage, it can pay the maturing obligation, as a rule, only by raising new capital. This is generally brought about through a refunding operation. When a railroad is in a position to sell its capital stock, therefore, the Commission feels that it should do so, under ordinary circumstances, since increasing the amount of capital stock relative to funded debt increases the safety. This is so since such an operation makes no addition to fixed charges. The effect of financing with stock, the Commission feels, should be to improve the credit of the railway company and to enable it to borrow on more favorable terms in the future.[36] In February, 1926, the Chesapeake and Ohio Railroad sought to capitalize the cost of acquisition of a subsidiary company through the issuance of mortgage bonds. In this instance the Commission said—

> It is our opinion that if the cost of acquisition of the Sandy Valley & Elk Horn is to be capitalized by the issue of securities, it should be made by the issue of stock rather than bonds, and we are of the opinion that when, as, and if the company's treasury is to be reimbursed for the expenditures made and to be made for additions and betterments as stated in the application, it should be an issue and sale of stock rather than bonds.
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> * * * * *
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> The applicant is one of a comparatively small group of carriers which are in the enviable position of being able to sell common stock at par or better. Its earnings and its present dividend rate afford ample opportunity for doing this to a liberal amount at the present time, and there is every indication that this will continue to be true, given capable management and prudent expenditure of capital. This being so it would be highly regrettable if so good an opportunity were neglected in view of the serious objections that exist to the financing of railroads by terminable mortgage bonds with foreclosure rights.[37]

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[36] Finance docket 2541 also 72 I. C. C. 658.

[37] Bonds of C. & O. Ry., 105 I. C. C. 748. Similar suggestion made in Securities Application of Asherton & Gulf Ry., 71 I. C. C. 281. See also dissenting opinion of Commissioner Joseph B. Eastman in Bonds of Alabama & Great Southern R. R., 117I. C. C. 460.

The Issuance of Common and Preferred Stock Without Voting Power

A question which has but recently received the attention of the Commission is that involving the issuance of various classes of stock without voting power. They have taken the definite stand of not approving the issuance of such securities—either common or preferred stock—except under most unusual circumstances. It seems that here the Commission could be accused of encroaching upon the functions of management since nothing is said in the Act relative to the distribution of voting power. Such cases require the careful study of the Commission, however, and if it appears that the issuance of non-voting stock of any kind and the consequent concentration of control of railroad properties in the hands of those who have made a relatively small investment, is opposed to the public interest, it is certainly within their powers to try to change the situation.

In the Nickel Plate Unification case the Commission took occasion to state its views on this matter as follows:

> Adverting to stock control, we have heretofore pointed out that the plan does not contemplate exchange of stock by the Nickel Plate stockholders. They therefore suffer no diminuation of their voting power. On the other hand the Nickel Plate, having leased its railroad and received therefore stock of the new company equal to its own stock, and having exchanged its holdings of Chesapeake and Pere Marquette stock for stock of the new company, will in effect be a holding company controlled by the Van Sweringens through their holdings in the Vaness Company. This will give them control of this large transportation system without the necessity of owning an actual majority of even the voting stock, much less all of the stock.
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> We can not escape the conclusion that the plan was arranged with the intention of keeping control in the hands of its proponents even though their interest is a minority one in fact. Such an arrangement is not in accord with sound railroad practice.
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> * * * * *
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> We believe it to be self-evident that the public interest requires that the entire body of stockholders of a railroad which is bonded in excess of one-half its investment, and not a powerful few, shall be responsible for its management. This can be done only by giving them the power to control the management. The lethargy of ordinary stockholders in exercising their

power to control the management of these large corporations has often been commented on, but nevertheless the power should be in the hands of the stockholders to use as they see fit. It is inimical to the public interest to strip stockholders of their voting power, thus rendering it so much easier to control a great transportation system by a comparatively limited amount of investment.[38]

In March, 1926, the Pittsburgh & West Virginia Railway was denied authorization for an issue of preferred stock with contingent voting power on the grounds that it was not in the public interest. At the same time the applicant was denied the privilege of converting its common stock from $100 par to $50 par on the grounds that by doubling the number of shares the voting power was therefore doubled and that such a conversion would enable control of the property to be acquired or to be held by a much smaller investment than that which was required under its present capitalization. The Commission made the following statement:

> The record indicates that one of the reasons for the adoption of the proposed plan is to enable the present stockholders to get back a part of their investment through the sale of the proposed preferred stock, but at the same time to retain control of the company. In order to make this preferred stock attractive, provision is made for the payment of dividends on a 5 per cent cumulative basis, but with only limited voting rights, * * . This would result, in effect, in the public taking over one-half ownership of the company but without the right of participation in its management except under certain contingent conditions.
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> * * * * *
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> In other words, the present controlling stockholders could sell all of the preferred stock and a minority of the common stock received by them in exchange for their present holdings, and still retain control of the company with approximately one-fourth of its capital stock. The applicant attempts to justify this condition on the ground that it has no bonds outstanding and that if fifty per cent of its capitalization consisted of bonds, the control of the corporation would be vested in a majority of the stock, or approximately

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[38] Nickel Plate Unification, 105 I. C. C. 425.

one-fourth of the capitalization; also, that the preferred stock will have preference as to dividends, and in the distribution of assets in the event of dissolution, and should not have voting power in addition.

We are of the opinion, however, that the fact that a company has no bonds outstanding is not a valid reason, in itself, why it should issue either bonds or nonvoting preferred stock.[39]

The attitude which the Commission has taken on this question, as indicated by the two cases just discussed, has been deviated from only under exceptional conditions. In one case they permitted a rather unusual distribution of voting power in order that control of the carrier might be maintained in such form as to permit prompt action in the event of an opportunity being afforded for sale, lease or other disposition of the line.[40]

The Question of Valuation

It may be said that the question of valuation is in a rather unsettled state, as to the part which it may play in the regulation of railway securities. Ultimately valuation will disclose and limit the amount of securities which a carrier can issue. This will thus have a limiting effect upon new securities which can not be ignored by the Commission. So far, however, there has been very little opportunity to apply this test since the work of arriving at final valuation figures is far from complete.

In their last annual report[41] the Commission shows that up to October 31, 1926 they had completed the preliminary underlying valuation on practically all of the steam railroads of the country as a basis for tentative valuations. Tentative valuation reports had been issued on more than half, about sixty-five per-cent, of the carriers and mileage. Final value reports have, however, been issued on only seven and three-tenths per cent

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[39] Stock of Pittsburgh & W. Va. Ry., 105 I. C. C. 553.

[40] Securities of Jacksonville & Havana Ry., 111 I. C. C. 107—The preferred stockholders were given one vote for each share of $100 par, while common stockholders were given one vote for each share of $5 par. The effect being that for an equal investment of money the voting power of the common stockholder was 20 times that of the preferred stockholder.

[41] *Fortieth Annual Report of the Interstate Commerce Commission*, December 1, 1926, pp. 13–14.

of the entire railroad mileage of the country. Since it is the final reports which would be used by the Commission in connection w th passing upon security issues it can be seen that there is a decided lack of valuation information. The Commission therefore, has not permitted the question of valuation to hamper it in its authorizations. The reports of Finance Cases disclose but few instances where valuation was a determining factor although the value of specific property is taken into account[42] but generally speaking the Commission refrains from mentioning the matter of valuation as the term is usually understood. Whether it will make more of the matter when valuations have been more generally determined, remains to be seen. The Commission is careful, however, to state from time to time that nothing contained in any report or order concerning any proposed issue of securities shall be taken as an expression of opinion with respect to, or as a determination of, the final valuation of the carrier's property for rate making purposes or otherwise; or as a commitment on their part as to the value of the properties for the purpose of section 15a of the Interstate Commerce Act.[43] Upon one occasion they made the statement that—

> The Commission can not upon application for authority to issue securities give to underlying land, engineering and accounting reports of its Bureau of Valuation the force and effect of final valuation, because they are subject to revision and correction before they become a tentative valuation of the property covered, and because such tentative valuation, when made, will be subject to the express terms of Section 19a to protest and change.[44]

The Commission has also expressed the opinion that pending final valuation of a carriers' property they feel that too great weight should not be given to the amount of capitalizable assets in excess of capitalization as indicating the margin of uncapitalized assets. When valuations have not been completed it is, of

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[42] D. & R. G. W. Re-organization, 90 I. C. C. 141.
[43] Acquisition and Operation by M. S., B. & P. R. R., 105 I. C. C. 99.
[44] D. & R. G. W. Re-organization, 90 I. C. C. 141.

course, impossible for them to compare a carrier's capitalization with its underlying value.[45]

Avoiding Delay in the Sale of Securities

In discussions of the subject of security regulation before the passage of the Transportation Act of 1920, many railroad men and bankers laid much stress upon the importance of being able to act promptly in order to take advantage of a favorable market in selling securities and upon the serious effect of the delay required by the necessity of obtaining the approval of the Commission in each case. Experience has shown that this danger was more apparent than real, for the average time required to secure the Commission's approval has been about thirty days. This average is higher than it should be, due to the fact that some carriers fail to furnish complete information when filing their applications. Where all data is furnished by the carrier with its original application, the average time consumed in securing the Commission's approval is cut down to between fifteen and twenty days.

Two methods for avoiding delay in the sale of securities have developed in practice. The first is, for the carrier to make arrangements for the sale of the bonds or other securities in advance, subject to the approval of the Commission.

The second method is, for the carrier to obtain the Commission's approval of an issue of securities without making any definite arrangements for their sale; simply stating that they will be sold in the open market or through brokers or bankers at par or not less than a certain per cent of par and accrued interest, with a selling commission of not to exceed a certain per cent. Until the securities in question are finally sold the carrier generally requests permission to use them as security for short-term notes if it should so desire. When the market is right for their sale no delay is encountered. When authorizing the sale of securities under this method, the Commission usually limits the time for their sale at the price mentioned to not later than one year from the date of their original order regarding any particular application.

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[45] Securities of St. L., S. F. Ry., 86 I. C. C. 818 and 99 I. C. C. 511.

When the first method for avoiding delay is used, the price at which the securities shall be sold has, as a rule, been informally agreed upon between the Director of the Commission's Bureau of Finance and the interested carrier. This is not to bind the carrier or the Commission in any way but is intended to obviate the danger of the head of the bureau, whose business it is to watch the market closely, objecting to the offering price. At the same time, after such informal conversation or agreement, the applicant must not assume that no objections or difficulties connected with the application will arise or be recognized by the Commission.[46]

In most cases of large bond issues they are advertised in the news papers before the formal applications have been filed with the Commission and several weeks in advance of the issuance of the order authorizing the issue of securities. In this connection the Commission has taken occasion to issue a warning as follows:

> While the law does not prohibit such a conditional sale in advance of approval of an issue of securities, carriers should realize that we shall not be controlled in our action by representations that failure to accord approval of issues so sold will result in disturbances or disarrangements of plans based on anticipated approval.[47]

The Commission has also stated that not only the issue of securities must meet with their approval—when sold subject to such approval—but also the terms of sale. They do not sanction the selling of bonds until approval of the price at which they are to be sold, has at least been informally discussed.[48]

The subject of delay in securing the approval of the Commission is partly provided for by the Act in the exemption of short-term note issues from the regulatory power of the Commission under Section 20a.[49] In the words of the Commission this—

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[46] Notes of Hocking Valley Ry., 105 I. C. C. 537.
[47] Bonds of N. Y. Central Ry., 65 I. C. C. 172.
[48] *Ibid.*
[49] Paragraph 9, Section 20a.

Was a recognition of the necessity of leaving to the carrier, to enable it to quickly and easily meet current financial needs, a certain leeway, a freedom of action within prescribed limits, in the negotiation of short-term loans. This exemption, however, is confined wholly to the short-term notes themselves, and does not extend to securities which the carrier may desire to pledge as security for such notes.[50]

In this connection, however, the Commission has ruled that it is obvious that freedom of action in the negotiation of short-term notes would be substantially curtailed if, before each issue of such notes, it were necessary to obtain an order authorizing the pledge of bonds to be offered as security therefore. The necessity for such loans can not aways be foreseen, and the opportunity to make them on favorable terms might be lost during the delay, incident to securing authorization.

Advance authorization of the pledge of bonds as security for short-term notes is in harmony with paragraph (9) of Section 20a of the Act.[51]

When bonds are pledged as security for note issues the Commission has ruled that the notes should be in a ratio on the prevailing market price of the bonds rather than on their par value.[52] It has been the policy of the Commission to require pledged securities in most instances to be from 115% to 125% of the amount of the notes. The exact nature of the collateral must also be made known to the Commission as they have stated that they can not issue general authority to pledge as collateral, "bonds, stocks, or other securities of any and every character and description which are or may hereafter be held in the treasury of the applicant."[53]

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[50] Bonds of the B. & O. Ry., 67 I. C. C. 10.
[51] *Ibid.*
[52] Bonds of Chicago, R. I. & Pacific Ry., 70 I. C. C. 316.
Pledge of Bonds by Erie Ry., 111 I. C. C. 427.
[53] Application of W. & L. E. Ry. Co. to pledge securities, 67 I. C. C. 293.

Chapter VI

The Control of Security Issues in Reorganizations, Consolidations and Projects for New Construction

Reorganizations

One of the most difficult problems which faces the Commission in administering the provisions of Section 20a is that which arises in connection with the reorganization of railroad properties following receiverships. In the past such re-organizations have been largely a matter of bargaining between groups of security holders, without much attention being paid to the matter of public interest, so that the results have often been not only contrary to public interest but also contrary to sound business principles. The result has been that recurring receiverships have not been uncommon.

It is easy to understand that on the theory underlying Section 20a a new company should not start its career with securities in excess of demonstratable value. It is also clear that the effectiveness of the Commission's control over railroad securities would be lessened if, upon re-organization, securities should be authorized greatly in excess of a fair valuation, but it has nevertheless been held that—

> In view of the manifest desirability of ending a long period of receivership, the Commission thinks that approval of security issues ought not to be withheld because of lack of complete information as to the value of the property to be taken over by the applicant.[1]

The Commission has shown itself likely to focus its attention upon the new company and its securities and to limit its report and order to the new company's securities. The foreclosed or re-organized company and its securities are left to the court in which the receivership is pending. Hence the Commission passes upon the classes and aggregate of the new company's

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[1] Bonds of Chicago and Eastern Ill. Ry., 67 I. C. C. 61.

securities, but as a rule does not concern itself with the basis upon which an old security-holder is to receive new securities under the re-organization plan. In one case the Commission held that holders of small blocks of bonds having protested against a re-organization plan of exchanging bonds for stock; that—

> the matter should be brought before the court having jurisdiction in the premises, which has expressly reserved the determination of the equities in the receivership proceedings.[2]

The Commission concerns itself with the operations of the bankers acting as the re-organization managers and with the fees which are charged for such service. They are inclined to approve re-organization plans which seem to have any chance of success even though such plans sometimes fail. In the Denver & Rio Grande Western re-organization, for example, three plans were tried before success was attained. The first plan proved unsound and soon broke down.[3] The second[4] had to be modified to meet, in part, certain objections of the State of Colorado and when so modified formed the third plan.[5]

In the Missouri-Kansas-Texas Re-organization the Commission administered a deserved rebuke to the re-organization managers by cutting their fees from $1,614,249.79 to $900,000 and counsel fees from $750,000 to $600,000. In this connection it was stated that—

> There is no definite formula by which services of the kind can be accurately evaluated, and the determination here necessarily rests within our best judgment, to be exercised in the light of all the applicable considerations. Balancing the capable services and the results which the managers and their counsel have performed and achieved in this re-organization against the public interest in the expenditure of large sums by common carriers subject to the act, and upon a full and careful consideration of all the evidence of record, we reach the conclusion that the compensation of the re-organization

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[2] *Ibid.*
[3] Stock of D. & R. G. W. R. R., 70 I. C. C. 102.
[4] D & R G W Re-organization, 82 I C. C. 745.
[5] D. & R. G. W. Re-organization, 90 I. C. C. 141.

managers should not be in excess of $900,000 and that of their counsel should not be in excess of $600,000.[6]

In further reference to re-organization expenses the Commission has taken occasion to say that the—

practice of placing the burden of re-organization costs upon the new company is questionable since the costs incurred on account of creditors and protective committee and their counsel should be borne by the parties concerned. The object of such committees is the protection of the interests of creditors and security holders of the insolvent company. Expenses incurred in such work should be met by those intended to be benefitted and not by the new company.

When, however, the plan of re-organization has been approved by the courts and the expenses do not appear unreasonable and the financial structure involves no fixed charges and the new company starts business with a fair amount of cash, it will generally be approved by the Commission.[7]

In every case where the Commission has authorized the issuance of receiver's certificates they have been careful to state:

The receivers are officers of the court and are acting under its authority. While it is within our province to give the authorization and consent under Section 20a of the Interstate Commerce Act, it is not to be understood that by giving such authority we pass upon or in any wise determine or affect the nature of the rights or liens to be enjoyed under the certificates or the priority of the certificates in their relations to other liens.

The reason for the inclusion of such a statement is obvious.

Consolidations

In the matter of consolidation of existing carriers under Section 5 of the Transportation Act of 1920, the Commission's power over securities is very potent. In the first place, it is part of their duty in this connection to see that the provisions of Section 5 paragraph (6) are obeyed, which provides that—

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[6] M. K. T. Re-organization, 99 I. C. C. 330.
[7] Acquisition and Stock Issue by N. C. & E. Ry., 86 I. C. C. 617.

The bonds at par of the corporation which is to become the owner of the consolidated properties, together with the outstanding capital stock at par of such corporation, shall not exceed the value of the consolidated properties as determined by the Commission.

In the second place, the Commission might, if it saw fit, exercise its power in connection with securities as a means of preventing the final steps in consolidations which had been originated under State laws. In the only case which has come before them as yet, where consolidation has been achieved in this manner, without consulting the Commission, their attitude was stated as follows:

The authority which the Commission has to withold approval in the public interest of security issues when State laws permit consolidation, does not mean that it may not grant approval when the public interest requires that it do so. Furthermore, in the absence of mandatory provisions of a Federal statute the Commission should give full faith and credit to acts of sovereign States, especially when their action is unanimous.[8]

In the third place, the securities which are to be issued in connection with a proposed consolidation must meet with the approval of the Commission or it will deny their authorization thus preventing the unification from taking place, even though the general plan of consolidation may meet with their approval. In the Nickel Plate Unification case the petition for authority to consolidate was denied by the Commission because it objected to the plan of financial control of the merger solely by the two Van Sweringen brothers at the expense of the ordinary stockholders. They took the position that the consolidation would have traffic advantages, but that the financial plan as proposed ignored the rights of the stockholders and was contrary to the public interest, in that it provided for indefinite control of the proposed consolidation by two individuals.[9]

In this case the Commission dealt very strongly with the relative rights of majority and minority stockholders in a rail-

[8] Acquisition and Stock Issue—N. Y. C. & St. L. Ry. Co., 79 I. C. C. 581.
[9] Nickel Plate Unification, 105 I. C. C. 444. See discussion on the issuance of securities without voting power, Chap. V. P. 46.

road corporation, although this was not the first time that they had done so, since they had stated in 1920 that—

> In a case involving dealings between two corporations under common control, the Commission may scrutinize a proposed transaction whereby one carrier seeks authority to acquire control of another carrier by the purchase of its stock, to determine whether the bargain is fair from the standpoint of protesting minorities. But where the transaction is between a carrier and individuals who are dealing with the carrier at arms length and are presumably capable of determining their own best interests, the Commission does not think that the Act requires it to do more than to determine whether the transactions will be in the public interest.[10]

Moreover, in connection with the acquisition of control by one carrier of another through the exchange of securities it has been stated that—

> It is merely the Commission's duty to inquire whether the securities offered by a carrier in acquiring control of another carrier are worth what the applicant proposes to pay for them, and an affirmative finding can not in any sense be taken as establishing or tending to establish the market value of the stock. Neither does such a finding impose upon a stockholder any obligation, or persuasion, to exchange an interest-bearing security for an equity in the applicant's property, since he is entirely free to do so or not, according to the dictates of his own judgment. If in his view the bargain is an improvident one, he is free to refuse the offer.[11]

The Commission also made a very definite statement in the Nickel Plate Unification case with respect to the reasonableness of the proposed terms of stock exchange between stockholders of lessor companies which are a party to the proposed consolidation or which may be parties to any consolidation in the future when they stated:

> Applicants concede not only that we have jurisdiction to pass upon the reasonableness of the considerations, terms and conditions, but request us, particularly with reference to the ratios of stock exchange, to indicate what

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[10] Control of the Big Four by N. Y. C., 72 I. C. C. 96.
[11] *Ibid.*

in our opinion would be just and reasonable. * * * * * The burden of ascertaining or determining proper ratios of exchange should not be cast upon us. If all the stockholders are impartially represented in the preliminary discussions they should be able to reach an agreement which can secure the approval of substantially all of the stockholders. . .

The burden is upon the applicants to justify the justness and reasonableness of the ratios of exchange. We should not be expected to do more than ascertain that fact upon the record. We should not be expected to arbitrate to the fraction of a share just what each stockholder should receive. Many similar applications will probably be filed in the future and if all of these applications, like the instant one, should request us to adjudicate their differences, in the commercial aspects of buying and selling railroad properties, the law would probably become unworkable. We can not undertake, at the request of parties, virtually to trade in several hundred thousand miles of ralroads and at the same time perform our legitimate duties under the law.[12]

Projects Involving New Construction

The Interstate Commerce Commission exercises a very direct control over the extension of existing railroad lines, or the construction of a new line. This control functions not only through the Commission's power to refuse to issue certificates of public convenience and necessity as required by law,[13] but also through its power to grant or deny the application for the issuance of securities, the proceeds of which are to be used for the above-mentioned purposes. It is with this latter power that we are concerned.

The construction projects which come before the Commission fall into two classes as far as their sponsors are concerned. The first of these is a proposal by a financially strong and well established railroad corporation either through the parent or a subsidiary company. The second is a proposal by some small

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[12] Nickel Plate Unification, 105 I. C. C. 448.

[13] Interstate Commerce Act., Section 1, Paragraphs 18–20.
The term "public convenience and necessity" implies both convenience and necessity since the words are not synonymous but must be given a separate and distinct meaning Necessity does not exist unless the inconvenience would be so great as to amount to an unreasonable burden on the community. The words imply an urgent, immediate public need. Statement of the Commission in Public Convenience Application of the A. & S. A. B. Ry., 71 I. C. C. 784.

independent company. In projects of the first type the Commission generally exercises very little restraint and usually approves the plans submitted by the carrier. In cases of the second type, however, the financial plans are scanned very closely since such roads are dependent solely upon their own earnings and can not fall back upon a parent company for support should the expected returns not materialize. Frequently the proposed construction may be approved, but only with the understanding that changes will be made in the plan of financing to meet the requirements of the Commission.[14]

The carriers usually submit their applications for certificates of public convenience and necessity first and their requests for authority to issue securities after the certificates have been issued. It is the custom, however, to include in the application for the certificate, some statement as to a tentative plan for financing the proposed project, but with the proviso that they will not expect to be bound by such a plan in any way. When this procedure is followed the Commission is careful to state when issuing the certificate that nothing contained in its report on the matter shall be construed as sanctioning any plan of financing which may have been proposed.

In the issuance of certificates the action of the Commission in many cases shows that in addition to the requirement that the extension or new construction must be in the public interest, as a general rule they will approve only such projects as are able to show expected future earning power indicating a return in

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[14] Limiting bonds which might be issued to fifty per cent of the total cost of road and equipment, exclusive of amounts donated. Public Convenience Certificate of W. F. & S. R. R., 67 I. C. C. 184. Securities of Wichita Falls and Southern R. R., 71 I. C. C. 694.

[15] Certificate of Tenn. R. R., 65 I. C. C. 654.
Certificate of Interstate R. R., 67 I. C. C. 141.
Certificate of C. R. R. of N. J., 70 I. C. C. 4.
Certificate to K. & O. S. Ry., 71 I. C. C. 130.
Construction of Branch Line by L. A. & St. L. R. R., 72 I. C. C. 746.
Construction of Line by Carbon County Ry., 76 I. C. C. 485.
Construction of Line by Kansas City So. Ry., 79 I. C. C. 161.
Construction of Line by American Niagara Ry., 82 I. C. C. 420.
Construction of Line by North & South Ry., 86 I. C. C. 663.
Construction of Extensions Etc. by A. E. R. R., 90 I. C. C. 732.
Construction of Line and Stock Issue by E. & S. F. Ry., 94 I. C. C. 695.
Construction of Line by A. & W. N. C. R. R., 111 I. C. C. 557.

excess of the fixed charges necessitated by the proposed plan of financing.[15] Ability to earn is not, however, the sole test of public convenience and necessity although it is always a most important factor to be considered. When earning ability can be shown it is probably safe to presume that a need for the new facility exists. On the other hand, when this ability can not be shown it is not always safe to assume that no need exists. On this point the Commission has made the following statement:

> Apparently the earnings in prospect for the applicant will be insufficient for some time to sustain the project as an independent enterprise. When it is established, however, that a project will render important public service, and its sponsors are willing to assume the risk of loss in the expectation of ultimate gain either directly through the property or indirectly through benefits to themselves and to the shipping community, the requirements as to the public interest may be fully satisfied, although losses to investors seem more probable than gains.
>
> We are to consider what is best in order to foster, build, and make efficient transportation facilities as a whole in the interest of the greatest number. Where only the private aspect is involved, individuals are at liberty to take risks. So far as the public is concerned, the advantages of new or better service may be so great as to justify increasing the burden upon shippers generally by the amount necessary to sustain the facility. If it should prove later, however, that the line, because of competitive conditions, lack of business, or other circumstances, cannot be operated profitably under fair divisions and fair rates, the burden of the loss would probably and properly fall upon the investors and not upon the shipping public.
>
> Our approval of a new enterprise neither constitutes nor requires a finding that such enterprise will prove successful. Our responsibility is to determine the public interest involved in the construction of the line.
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> * * * * *
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> Prospective earnings or losses may properly be considered as one of the factors evidencing the public interest, but, taken alone, do not determine whether a particular enterprise is or is not required by public convenience and necessity.[16]

The significance of the financial aspect, of course, varies in different cases and the Commission must decide each case by

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[16] Construction of Line by Wenatchee Southern Ry Co., 90 I. C. C. 237.

the particular facts presented. It is not possible to state a rule applicable to all alike but it is safe to say that their statement just quoted, applies to the unusual situation rather than to the general run of cases involving construction. The Commission does not sustain any contention to the effect that if a strong or urgent need for a new line of railroad can be shown, they must in all cases issue a certificate of public convenience and necessity for the construction of such line, irrespective of whether that line will be able to handle sufficient traffic to pay the expenses of operation.[17]

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[17] Construction Application of Mich., No. 65, I. C. C. 480; 72 I. C. C. 21.
Public Convenience of Golden Belt R. R., 67 I. C. C. 370; 70 I. C. C. 73 and 71 I. C. C. 233.
Construction Application Natl. Belt Line Ry., 71 I. C. C. 556.
Construction Application of S. & N. E. Ry., 71 I. C. C. 586.
Construction of Line by J. S. W. R. R. Co., 76 I. C. C. 778.
Construction of Extension by Wyoming Ry., 86 I. C. C. 707.
Proposed Construction by N. V., R. G. & G. R. R., 90 I. C. C. 616.
Proposed Construction by C., C. & M. R. R., 94 I. C. C. 676; 86 I. C. C. 18.
Proposed Construction by M. & W. R. R. Co., 94 I. C. C. 372.
Construction of Line by W., B., T. & S. Ry., 94 I. C. C. 591.

Chapter VII

The Interstate Commerce Commission's Control Over Offering Price and Method of Sale

Nothing is said in the Transportation Act of 1920 as to the price at which securities may be issued and sold, although in passing upon security issues, one of the principal duties of the Commission is to see that the additional capital required by the carriers is secured at the lowest possible cost to them. It is for this reason that the offering price and arrangements made for sale to the bankers and public are so carefully scrutinized.

The usual practice is for the carrier to make arrangements with their bankers to underwrite the proposed securities before the matter is taken up with the Commission. Then an informal conference is usually held with the head of the Finance Bureau[1] on the matter of price and arrangements for sale. At this time the price to be stated in the formal application for authorization is tentatively arrived at. Generally the price so stated is that which the carrier and its bankers have previously agreed upon. It must not be thought, however, that the Commission does not keep an eye on the market and should conditions change before the application for authorization is presented to them they do not hesitate to authorize a higher price than that stated by the carrier.[2]

Where the actual price at which the proposed issue of securities is to be sold is not stated in the application, the carrier provides that it proposes to sell them at the best price obtainable but at not less than a certain minimum figure. This minimum figure is then either approved or disapproved by the Commission. Sometimes a carrier shows that it has had negotiations with a number of banking firms in regard to the proposed sale

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[1] See Chapter V, page 51.

[2] Some cases where the activity of the Bureau of Finance has resulted in a better price than was first arranged for by the carriers: 99 I. C. C. 121; 99 I. C. C. 227; 99 I. C. C. 741; 99 I. C. C. 417; 105 I. C. C. 331; 105 I. C. C. 144; 111 I. C. C. 241; 111 I. C. C. 602; 111 I. C. C. 681.

and that the price offered by the particular firm or group of firms mentioned as the purchaser, is the best obtainable. In view of such circumstances the Commission approves the price as a matter of course, provided it is not too far out of line with market conditions for that type of security.[3]

All sale prices authorized by the Commission are minimum prices and there is nothing to prevent a carrier accepting a higher figure if it is obtainable. In actual practice however, the carriers seldom receive a higher price than that stated in the authorization. A study of the sales of bonds and equipment trust certificates authorized by the Interstate Commerce Commission in lots of $1,000,000 or over from 1920 to the end of 1926, reveals the following:[4]

Bonds

Year	No. of Authorizations of $1,000,000 or over	No. of cases showing a difference between authorized price and price received by the carrier from bankers	Average difference in the two prices per $100
1920	3	0	$0.00
1921	20	7	7.27
1922	25	8	2.51
1923	18	7	2.05
1924	45	7	.85
1925	25	7	.78
1926	27	4	6.65
Total	163	40	Grand Average .502

Equipment Trust Certificates

1920	5	2	1.41
1921	4	0	0.00
1922	23	5	1.31
1923	51	8	.79
1924	34	4	1.00
1925	26	3	.58
1926	22	1	.39
Total	165	23	Grand Average .176

[3] Securities of Ann Arbor R. R., 99 I. C. C. 52.
F. P. & E. R. R. Equipment Trusts, 105 I. C. C. 297.
P. & W. Va. Equipment Trusts, 105 I. C. C. 548.
[4] See also Appendix B.

During the period from 1920–1926, therefore, out of a total of one-hundred and sixty-three authorizations for bond issues of $1,000,000 or over there were only forty cases where the carriers received more than the authorized price and the average difference between the two prices was but approximately fifty cents. During the same period out of one hundred and sixty-five authorizations for equipment trust certificates, there were only twenty-three cases where the carriers received more than the authorized price, and this difference averaged approximately seventeen cents. As far as other types of securities were concerned the carriers in only three cases received more than the authorized price.[5]

This same study reveals that the average difference per $100 between the price paid the carriers by the bankers and the price at which the securities were sold to the public, in the cases where complete information was available, to be as follows:

	BONDS	EQUIPMENT TRUST CERTIFICATES
1920	$3.48	$1.91*
1921	3.48	2.30
1922	3.52*	2.33*
1923	2.74*	2.33
1924	3.20	1.86
1925	3.06	1.80
1926	2.66*	1.47
Grand Average.....	3.16	2.00

*Indicates that during that year there was one case in which the bankers offered the public securities at a price lower than that which they paid the carriers.

In the case of notes and receivers certificates the average difference per $100 for the period 1920–1926 was $2.08.

[5] For additional data on these figures see Appendix B.

These figures would indicate a gross profit to the bankers per $1000 bond of $31.60; per $1,000 equipment trust certificate of $20.00 and per $1000 note or other miscellaneous type of security of $20.80. There is no way of ascertaining what the bankers' net profit might be, but considering the costs of distributing securities today it would not appear to be unreasonable. It must be borne in mind, however, that these are average figures arrived at by considering the cases in which all sales information was available. Reference to the tables in Appendix B. will show that there are many cases where the ultimate sale was of a private nature and other cases where the gross profit in the transaction was much more than the average. Moreover it will also be seen that there were several cases where the price to the public was below that paid to the carrier.

The averages just discussed also give us a rough idea of the cost of financing to the carriers, but their value in this connection is limited, due to the fact that no consideration is given to the amount of capital secured in each instance. For example, the cost of financing would appear the same whether a bond which the carrier received 95 for, was sold to the public at 98, or yielded the company 85 and was sold for 88; yet the cost of getting a million dollars in the second case would be materially more.[6]

The Commission in administering the provisions of Section 20a also concerns itself with the methods by which railroad securities are sold, although nothing is said in the act as to how such matters should be handled. On October 26, 1922 the Commission he'd a public hearing[7] on this important question at which the following questions were submitted for general discussion:

1. Whether and to what extent the commission should, by its order in granting or witholding authorization and approval, determine, limit, or restrict the price at which or the manner in which securities are to be sold

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[6] For individual cases the reader is referred to Appendix B. For an interesting and timely discussion of the question of cost of capital to railroads see—Dorau, H. B., *The Cost of Railway Capital—Journal of Land and Public Utility Economics*, Vol. III, No. 1, February 1927, pp. 1–20.

[7] Finance Docket No. 2588.
Bonds of Chicago Union Station Co., 86 I. C. C. 529.

and the cost to the carriers of the marketing of securities issued under the provisions of section 20a of the Interstate Commerce Act?

2. Whether it is within the province of the commission to require competitive bidding in the sale of securities so authorized and to be issued and whether competitive bidding should be required?

3. If competitive bidding should be required, to what class or classes of securities should it be applicable and what regulations of conditions should be prescribed relating to such sales?[8]

The above questions were the outcome of the Commission's experience up to that time in considering requests for authority to issue various kinds of railroad securities. The Commission had found that carriers rarely, if ever, advertise for competive bids when marketing new securities, and that they seldom approach or consult with more than a single financial house. As a general rule each railroad company has a firm of bankers upon which it depends regularly and uniformily for financial advice, and in issuing securities it deals with no other. The two concerns which do most of this financing are J. P. Morgan & Co. and Kuhn, Loeb & Co.

Without attempting a complete list, the records of the Commission show that the following large railroad companies market their securities only through J. P. Morgan & Company, or financial institutions closely affiliated with them:

Atlantic Coast Line Railroad Company.
Chicago, Burlington & Quincy Railroad Company.
Chesapeake & Ohio Railway Company.
Erie Railroad Company.
Florida East Coast Railway Company.
Great Northern Railway Company.
Louisville & Nashville Railway Company.
Nashville, Chattanooga & St. Louis Railway.
New York Central Lines.
Northern Pacific Railway Company.
Southern Railway System.

Similarly the records indicate that the following railroad com-

[8] *Ibid.*

panies use Kuhn, Loeb & Company as their exclusive financial agent:

Central of Georgia Railway Company.
Chicago & Eastern Illinois Railroad Company.
Chicago, Milwaukee & St. Paul Railway Company.
Illinois Central Railroad Company.
International-Great Northern Railroad Company
Long Island Railroad Company
Missouri Pacific Railroad Company
New Orleans, Texas & Mexico Railway Company.
Pennsylvania Railroad System.
Southern Pacific System.
Texas & Pacific Railway System.
Union Pacific System.
Wabash Railway Company.

At the hearing the practice of dealing with a single financial house was strongly supported by representatives of the railroad companies and the bankers. Summarizing the points developed, it was argued that railroad securities are different from securities, such as State or Municipal bonds, which are sold on competitive bids. There are many and wide variations in the kind and quality of railroad securities, dependent upon the earning power of the particular company, the relation between its stock and funded debt, the character of its outstanding mortgages and similar factors. Expert advice in marketing such securities, resting upon intimate knowledge of the road's financial structure and of the likes and dislikes of investors, is said to be necessary. The credit of a railroad is dependent upon the success it has in selling its securities. Failure may cause irreparable injury to its credit standing. Moreover, the continual fluctuations in market conditions often make time a most important element in the sale of railroad securities. Competitive bidding is a process which consumes time, involves delay and may under certain conditions prove hazardous to the success of the security issue.

Stress was laid upon the fact that it is necessary to distribute securities much more widely today than was once the case.

Sales to investors in large blocks are said to be rare and instead, railroad securities are now sold in small ots to small investors scattered all over the country. The experience and organization which a leading banking house, favorably known to investors, provides, is deemed necessary to such distribution. To guard against speculative attacks, it is said to be important that the announcement that securities have been underwritten, should be made public simultaneously with the announcement of the proposed issue, which would be impossible if competitive bids were procured. Railroads, moreover, deem it an advantage in times of stress to have the advice and support of a strong banking concern with intimate knowledge of their affairs, an advantage which can only be gained through regular banking connections.

There was no open advocacy of competitive bidding at the public hearing, on the part of anyone, which might have been due to the fact that the banking houses which largely monopolize the situation under the prevailing system, are largely jobbers rather than retailers of securities, which in general, sell to other banking houses, who then distribute to investors. A considerable degree of power over the other banking houses arises out of this situation and it was, therefore, perhaps difficult to secure a full public discussion by all concerned of the common practices in the marketing of railroad securities.

The hearing was held at a time when the carriers were recovering from a period of traffic depression and when more than normal uncertainty surrounded the marketing of their securities. Conditions were not favorable for any experiments and the Commission thought it wiser to let the present method remain in force rather than to attempt to require any system of competitive bidding. It felt that the public interest could be sufficiently protected for the time being, at least, by fixing, in orders approving security issues, minimum prices consistent with market conditions.[9]

The subject of competitive bids was not, however, dismissed from further consideration. While the arguments advanced in favor of the present practice had force as applied to carriers of

[9] Bonds of Chicago Union Station Co., 86 I. C. C. 529.

more or less uncertain financial status, they had less force in the case of carriers of assured earning power and favorable financial structure. They also had force as applied to types of railroad securities which are not of a standardized nature but had less force in the case of bonds issued by union station and union terminal companies and equipment-trust obligations which are, by their nature, all most always alike. In the case of the application of the Chicago Union Station Co.[10] the Commission held that—

> In this instance applicant is a terminal company owning lands in the heart of Chicago and controlled jointly by four large railroad companies which propose to guarantee its first mortgage bonds. In the case of such a company marketing such bonds, the arguments advanced against competitive bidding have little weight. We know of no good reason why applicant, in selling its securities, should deal with a single financial house.

The Commission ruled in this case that a certain portion of the proposed bond issue, which had not already been sold to the public, should be sold only "to the highest bidder after public advertisement for competitive bids." This order was, however, later modified so as to permit the sale of the bonds in question without competitive bidding, the Commission stating—

> It appears that the price at which it is proposed to sell the bonds is approximately the current market quotation for these bonds, which is no doubt as good a price as could be obtained by competitive bids.[11]

Equipment-trust certificates particularly lend themselves to sale though competitive bidding in the opinion of the Commission since they are practically standardized and depend less on the credit standing of the carrier issuing them, than to other types of railroad securities. In fact their sale in this manner is not entirely unusual by voluntary action of the carriers con-

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[10] *Ibid.*
[11] Bonds of Chicago Union Station Co., 94 I. C. C. 177.

cerned.[12] The Commission has taken occasion to make the following statement regarding them:

> Equipment-trust obligations enjoy certain characteristics which make for stability in an exceptional degree. They enjoy direct lien on equipment purchased with the investor's money and find ready market among individuals and institutions which desire securities of particular maturities. They are not involved with other existing issues and do not require the determination of seniorities on account of prior mortgages. Rolling stock is usable not only on the lines of the particular railway purchasing it, but if need be, it finds use on other lines. There is little doubt but that any carrier of good credit can sell an issue amounting to several million dollars of equipment-trust certificates at desirable prices. Such certificates it would appear could frequently be sold direct in large blocks to important institutions.
>
> It is vitally necessary that the market for railway securities be widened. Certain strong industrial corporations use the services of important banking houses for placing their larger issues of securities, but do not feel it is necessary to market, in this manner, all of the securities which they may offer to the public. Experience seems to indicate that the strong banking houses are willing to handle large industrial issues which seem attractive, whether or not the same banking houses have handled smaller issues of the same corporations. One of the unfortunate impressions regarding the railroads at the present time is that they are unduly in the habit of relying upon certain financial institutions upon which they thus become dependent. Anything that would result in removing this stigma, whether deserved or undeserved, would be a beneficial step for the carriers, the banking houses and the public. It seems desirable that equipment-trust securities in particular should receive consideration in this connection and that the carriers should give serious thought to the marketing of these, and perhaps other securities, on a competitive basis.[13]

The above statement was made on March 29, 1924, and showed in what direction the attitude of the Commission was tending. The Commission did not attempt, however, to directly or indirectly force competitive bidding in the case of such securities, but contented itself with fixing a minimum price for the issues which seemed to be reasonable.

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[12] Norfolk & Western Equipment-Trust 1922, 71 I. C. C. 749.
C. & N. W. Equipment Trust of 1923, 86 I. C. C. 61.
Norfolk & W. Equipment-Trust 1924, 86 I. C. C. 553.

[13] U. P. Equipment-Trust Series D., 86 I. C. C. 612.

One member of the Commission, Mr. Joseph B. Eastman, has been a consistent advocate of competitive bidding for equipment-trust obligations as well as for securities of a similar nature.[14] Despite his contentions, the Commission pursued the policy just mentioned; and also in the face of protests made in one instance by bondholders[15] and in another by stockholders[16] of railroad companies, contemplating the issuance of equipment-trust certificates. Both these protests were to the effect that a more advantageous sale could be made by means of competitive bidding and in the latter case the Commission did require that the price proposed to be paid by the purchaser be increased, since it appeared somewhat below that of other recent and similar issues. On June 26, 1926, however, in approving the application of the Western Maryland Railway Company to issue certain equipment-trust obligations, it was ruled that hereafter such securities must be sold by competitive bidding in the same manner as State, county and municipal securities are commonly sold.[17] Moreover it was intimated that a similar policy might later be applied to the marketing of other classes of railroad securities, but the Commission held back a decision on this point until a later date. The following statement was made:[18]

> We propose for the present no change of selling methods in the case of other railroad securities and are fully mindful of the considerations so frequently and forcefully urged in favor of the ordinarily existing relation of banker and railroad, and of the advantages to the latter which many believe result from a proper conduct of that relation by both parties thereto. We

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[14] Cases dealing with the issuance of equipment-trust obligations in which Commissioner Eastman has dissented because no provision was made for sale through competitive bids:
99 I. C. C. 121; 303; 417; 682.
105 I. C. C. 196; 215; 293; 343; 365; 361; 415; 493; 517; 753; 581; 695; 725; 713; 785.
111 I. C. C. 130; 237; 241; 255; 73; 409.
Also in Bonds of Cleveland Union Terminals Co., 99 I. C. C. 176 and Bonds of Jacksonville Terminal Co., 99 I. C. C. 549 as involving a similar situation.

[15] C. M. & St. P. Equipment Trust Series D, 99 I. C. C. 682.

[16] Penna. R. R. Genl. Equipment-Trust Series D, 111 I. C. C. 241.

[17] Ex Parte No. 54—56 I. C. C. 847 gives procedure suggested to be followed in the disposition of equipment-trust certificates.

[18] Western Maryland Equipment-Trust, Series D, 111 I. C. C. 434.

are concerned with the sale and distribution of railroad securities from the point of view of economy in the cost of capital to the railroads, to the end that the total burden of transportation shall be no larger than is absolutely necessary.

It is our opinion, however, that the sale of equipment-trust certificates by public competitive bidding will be effective in so widening the market for these securities as to assist in the effective and economic financing of railroads by means of other securities, such as may from time to time become necessary. Whether in the course of time it may come about, that classes of railroad securities other than equipment-trusts shall be susceptible to the same method of sale with economical results, is a question that need not now be considered.

The reasons given by the Commission for adopting this policy were summarized as follows:

1. These securities are of virtually uniform character, they enjoy a high degree of safety as to payment of principal and interest, and the prices that they bring are very largely determined by interest rates current for the best class of security. The relative financial strength of the issuing carriers has ceased to be an important factor in determining prices.

2. While it is probably true that in former days equipment-trust securities were largely taken by investment institutions (such as insurance companies and savings banks), it is evident that they are now growing in favor with individual investors who have at times of late, been willing to pay more for them than these institutions.

3. The investment market as a whole has been growing very greatly in size in the years following the war. It now absorbs annually some billions of securities other than those of railroads. While it is true that industries other than railroads have taken and are taking by far the largest part of new capital, it is also true that there is an ever-growing demand for securities of the best class, in which railroad equipment-trusts occupy a prominent place. It seems to us that the sale of these by public competitive bidding will tend to widen their market and thus produce capital more cheaply for the issuing railroads.[19]

The statement of the Commission which was just quoted[20]—that they "propose for the present no change of selling methods in the case of other railroad securities, . . ." evidently

[19] *Ibid*
[20] *Cf.* Supra. 71

does not mean that they will refrain from requiring sale by public bidding in particular cases where they may deem it to be advisable. For example, on July 10, 1926, in approving the readjustment of the financial structure of the Boston and Maine Railway, involving among other things the issuance of prior preference stock, the order provided in part as follows:

> To comply with (State) statutory requirements, the proposed prior-preference stock will be first offered to existing stockholders at par. Any amount not taken by them will then be offered for sale at public auction at not less than par.[21]

Since the issuing of their order in connection with the Western Maryland Equipment-Trusts (111 I. C. C. 434) on June 23, 1926, there have been a number of cases which illustrate the attitude that the Commission is assuming toward this question. The Illinois Central Railway, for example,[22] stated in its application that it had arranged to sell certain equipment-trust certificates to Kuhn, Loeb & Co., of New York City, at 98.43 per cent of par, upon which basis the average annual cost would be approximately 4.75 per cent, and stated that it had reached the conclusion that the present method of marketing its securities through a banking house with which it had established relations, was for its best interest and should not be abandoned. It also stated that the price offered was a fair one and advantageous and as high as could be reasonably expected from a responsible purchaser and was on a basis which would permit the distribution of the certificates to permanent investors at a fair price. To this the Commission replied in part as follows:

> We are not convinced that the method proposed by the applicant for marketing the certificates is in the best interest of either the applicant or the public. Our views as to the advantages of competitive bidding as a method of marketing such certificates have already been set forth. In a recent application equipment-trust certificates bearing the same rate of dividends and maturing in the same number of installments as those covered by the instant application, have been offered for sale through competitive bidding

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[21] Boston & Maine Readjustment, 111 I. C. C. 457.
[22] Equipment-Trust Certificates of Ill. Central Ry., 117 I. C. C. 15.

and as a result the price was realized of 99.517. We will authorize the sale of these certificates at not less than 99.517 per cent of par and accrued dividends, upon which basis the average annual cost to the applicant will be approximately 4.578 per cent; or the applicant may offer them for sale through competitive building . . . such sale to be made to the highest bidder but at not less than 98.43 and accrued dividends.[23]

The action of the Commission in this case is significant as indicating the way in which carriers will be forced into disposing of this type of security according to the newly prescribed method. The difference in the price offered by the bankers and that at which they were ordered to be sold at private sale—1.087—being sufficiently large as to absorb considerable of the banker's possible gross profit. At the same time the Commission protected the interests of the carrier by placing the minimum price at which the certificates could be sold through public bidding, at the figure originally offered by the bankers.

The next case of interest was that of the Seaboard Air Line[24] which was permitted to sell to their regular bankers without competitive bidding, due to the fact that the issue was peculiar since it was divided into two parts; there being $9,060,000 of four and one-half per cent 1st lien certificates authorized to be sold at not less than 95.75 and $2,276,000 of five and one-half per cent second lien certificates authorized to be sold at not less than 97. This has been the only exception from the competitive bidding rule so far in the case of a large issue. Some small issues have been disposed of at private sale under unusual circumstances.[25] Small lots have not, however, all been sold at private sale as in one particular case[26] the carrier represented that Kuhn, Loeb & Co. had offered to buy the certificates subject to the Commission's approval, at par and accrued interest, thus making the average annual cost to the applicant 4.75 per cent. It was contended by the carrier that since the issue involved was small ($410,000) and prompt action was

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[23] These certificates were sold to Halsey, Stuart & Co., their bid being 98.815 per cent of par and accrued dividend.

[24] Seaboard Air Line Equipment Trust Series Z, 117 I. C. C. 193.

[25] Erie Ry. Equipment Trusts, 111 I. C. C. 667.

[26] Equipment-Trust of the C. St. P. M. & O. Ry., 117 I. C. C. 11.

important it was not feasable to invite bids for the sale of the certificates. To this contention the Commission replied by making reference to their views as to the advantages of competitive bidding as a method of marketing this type of security, which views have already been quoted at length, and also made the following statement:

> In a recent application[27] equipment-trust certificates were offered for sale through competitive bidding and sold at a price to make the average cost to the applicant approximately 4.578 per cent. Should it be possible through competitive bidding to dispose of the proposed certificates on this basis, the saving to the applicant notwithstanding the small amount of the issue, would be considerable.
>
> The record fails to show such urgency for prompt action as to render the inviting of bids for the sale of the certificates infeasable. Accordingly, we will authorize the sale of these certificates without resort to competitive bidding at not less than 100.803 per cent of par and accrued interest, upon which basis the average annual cost to the applicant will be approximately 4.578 per cent; or the applicant may offer them for sale through competitive bidding . . . such sale to be made to the highest bidder, but at not less than par and accrued interest.

Another interesting case was that of the New York, New Haven & Hartford Equipment Trust of 1926[28] since it illustrated the method which the carriers were adopting, in order to meet the requirements of the Commission and at the same time be assured of receiving their funds when needed. In this case the carrier did not advertise for bids but solicited offers from various bankers *before* making application for authorization of the proposed issue. Ten offers were received and the best of these was the price at which the Commission authorized the securities to be sold.

The question of whether securities are to be sold through

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[27] The application referred to by the Commission was that of the Central of New Jersey Equipment Certificates, 111 I. C. C. 675.

[28] N. Y., N. H. & H. Equipment-Trust of 1926, 117 I. C. C. 365.

The same method of securing offers was resorted to in later cases—Western Md. Equipment-Trust, Series E, 117 I. C. C. 581.

Mobile & Ohio Equipment-Trust Series P, 117 I. C. C. 621.

competitive bidding or by private arrangement is likely to be further complicated by Congressional action. On May 10, 1926, a bill was introduced in the Senate with the purpose of amending Section 20a of the Transportation Act of 1920, as follows:

> In granting any application for the issuance of any bond or other evidence of indebtedness under this section the order of the Commission shall provide that such bond or evidence of indebtedness shall be sold or otherwise disposed of to the highest bidder only, Advertisement for proposals shall be had in such manner and bids shall be opened by such persons, as the Commission shall in its order provide, and the carrier shall notify the Commission and each bidder, of the time and place of opening bids and shall permit the bidder and the Commission, or representative thereof, to be present. A record of the bids shall be filed by the carrier with the Commission. The provisions of this paragraph shall not apply to bonds or other evidences of indebtedness to be issued in connection with an acquisition or consolidation approved by the Commission under section 5, and the Commission may in its order, for good cause shown, grant other relief from the provisions of this paragraph if such relief is found by the Commission to be compatible with public interest.[29]

This bill was referred to the Committee on Interstate Commerce and no further action was taken on it. There is a chance, however, of its being acted upon in a future session of the present or at a later Congress, in view of the interest which is now being taken in the matter of competitive bidding for railroad securities.

Every now and then the contention is made that a railroad could market its securities itself and thus save the underwriting fees. This is done by certain roads with a high financial standing such as the Norfolk & Western Railway, which makes some sales of comparatively small sized issues, through a subsidiary, the Virginia Holding Company. A notable example of direct marketing was the refunding operation carried out by the New York, New Haven & Hartford Railroad in February, 1925, when banks, industrial concerns, insurance companies and other patrons in the territory which it serves, as well as employees, subscribed to practically the full amount of the $23,000,000 fifteen-year

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[29] 69th Congress, 1st Session Senate 4213.

six per cent bonds issued to refund the European loan which matured on April 1st, 1925.[30] There seems to be no good reason why this method of sale should not be more widely adopted and when it tends to reduce the cost of securing capital for the carriers, it will undoubtedly meet with the approval of the Commission. Most direct sales, however, are made by a carrier desiring to sell securities, particularly stock, to its patrons with a view to obtaining their good will and support. In this connection the Commission has held that—

> Reasonable expenses in connection with obtaining the subscriptions (to stock) appears to be a proper organization expense which may be included in the investment accounts of the applicant.[31]

So far, however, such direct sales have usually been resorted to when the carrier has been faced with the prospect of being unable to have the securities underwritten.

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[30] Authorized in Bonds of N. Y., N. H. & H. R. R., 94 I. C. C. 635.
[31] Securities of Jacksonville & Havanna R. R., 111 I. C. C. 107.
Securities of C., S. & St. L. Ry., 111 I. C. C. 116.

Chapter VIII

The Attitude of Bankers and Railroad Officials Toward Security Regulation

The previous chapters of this study have been devoted to a discussion of the many problems which the Interstate Commerce Commission has had to face in regulating railway security issues since 1920 and the steps which have been taken to put the provisions of the law into effect; as well as the way in which the law has been interpreted by the Commission. Most applications for the issuance of securities have been approved or disapproved by routine procedure but there has been formal action in a number of cases. This action has sometimes resulted in direct benefits to the carriers as, for example, when the Commission's authorization required that the securities in question, be sold at a higher price than that stated in the application, thus resulting in the funds being secured at a less cost. At other times action has been against the desires of the carrier and more in the interests of the public, as for example, when steps have been taken to guard against even the possibility of overcapitalization resulting from any proposed scheme of financing.

From conversations which the writer has had with a number of leading railway finance officers as well as with investment bankers and also from correspondence the opinion has been reached that, on the whole, the regulation of railway securities as exercised by the Interstate Commerce Commission has been beneficial to all concerned. If such regulation is necessary, and there seems to be no question but that it is, both bankers and railroad men feel that it is a great advantage to have such regulation in the hands of a Federal agency rather than in the hands of various State Commissions. This is of significance at this time when, due to the tremendous growth in the investment field and the wide diffusion in the ownership of corporate securities, certain experts are advocating Federal regulation of all corporate security issues.

The objections to Federal regulation which were expressed

prior to the passage of the Act of 1920 did not materialize or have been largely overcome. It does not appear, for example, that this control has restricted railroad enterprise although in some quarters it is regarded as one of the things making it harder to do business. It does not appear that paternalism in government has been fostered by transferring too much detailed authority over the carriers from their responsible managers to public officials even though there does seem to be an increasing tendency for the Commission to encroach upon the functions of actual management. However, this tendency has becom noticeable only during the past year as up to that time the Commission followed the policy of avoiding any such actions. Such an encroachment upon the functions of management is particularly noticeable in such cases as that of the Chesapeake and Ohio Railroad, where although the earnings and financial position of the carrier were such that bonds could safely be issued, authorization was denied on the grounds that the Commission felt that the road should sell stock instead. In such cases it would seem that the Commission was over-reaching its authority —to the point of determining the financial policy of a carrier— and managing the railroads rather than regulating those carriers subject to its jurisdiction.

In the opinion of railroad men and bankers this tendency on the part of the Commission is the greatest present fault—if not an actual danger—in the Federal regulation of railway securities. Besides being illustrated by the Commission's action in regulating the kind of security to be issued it is typified by their action in regulating the price at which a security issue is to be sold and the method by which it is to be sold. The regulation of the offering price is not objected to. It is recognized that one of the principal duties of the Commission is to see that capital is secured for the carriers at the lowest possible cost to them, but it is felt that the Commission is going too far and making a mistake when it prescribes the method of sale. Both railroad men and bankers feel that there is no good reason for changing the established method for selling railroad securities, either equipment-trust certificates or any other type of security, since taking the investment market as a whole, with its continual

fluctuations and changes in supply and demand conditions, it would seem extremely doubtful if any system of competitive bidding would produce capital more cheaply for the carriers than the method which has been, and is, generally used.

By placing its securities through a regular banking connection the railroad is said to possess several advantages. In the first place, it is only through regular connections which have been maintained for a number of years that a carrier can obtain intelligent, informed and consistent financial advice and assistance in developing and building up a sound financial structure. When a banker regularly attends to the financial needs of particular carriers he has a professional interest in their success since their financial policy has been adopted on his advice. In the second place, it is only through established and regular banking connections that a carrier can have the assurance that any particular issue of securities, which have been approved and sponsored by these regular banking connections, will be a success. In other words that they will be sold to investors and not stay on the market too long in large quantities, thus avoiding the financial discredit incident to the offering of securities which the public will not accept or will accept only on terms not known and approved in advance, which terms may be as disadvantageous to the carrier and its credit as a rejected offer or a proposed sale which has failed. In the third place, it is said that it will probably always be possible to get banking houses to bid for securities in easy times, some may even make bids for the advertising connected therewith, but in hard times the carrier will have no responsible and well tried banker to fall back upon. In the fourth place, if the carriers are deprived of the advice and assistance of banking firms with whom they have dealt for a long time, and they surely would be deprived of such services if these houses were not assured of getting the financial business of the railroads, they would have to shape up their security issues themselves and there would be no assurance that they would be suited to prevailing financial conditions. This is not so true in the case of equipment-trust certificates which are practically standardized, but even with such securities market conditions have to be considered before they are offered

to the public and no one is more capable of judging the market than the bankers.

In the case of equipment-trust certificates under the orders at present laid down by the Commission for their sale, there is no certainty that any bid developed through competitive bidding will be acceptable. Should all the bids be rejected there would be a manifest difficulty in persuading bidders to make a second bid and the effort to place the securities would be greatly hampered. This is regarded as most disadvantageous by railroad men as the custom in buying equipment seems to be to contract for its construction before the financing is even considered. In other words the equipment is bought and then when it is ready for delivery or a short time before it is placed on the particular carrier's rails, arrangements are made to finance the purchase. This method saves interest on the equipment obligations while the equipment is in course of construction which may take several months. As the situation now stands a carrier can not be absolutely certain that it will have its financing attended to by the time it requires the funds, since it can not make arrangements with the bankers as of old but must offer the securities for competitive bids. This means that, in order to avoid trouble when the equipment is ready for delivery, the carriers must offer their equipment-trust certificates some time before the funds are actually needed and if sold must begin to pay interest on them from that date, which in the case of a large issue is worth consideration.

There are already evidences and the tendency will no doubt become more marked as time goes on, for the houses which are dealing in equipment-trust certificates mutually to accommodate each other. Some interests will refrain from bidding on certain cases with the expectation that they will be favored with a similar forbearance in others at later dates. Some houses, moreover, refuse to bid on such securities at all. It is worth noting that in the case of the Illinois Central Equipment-Trusts, which have been mentioned in a previous chapter, only two houses made bids and neither of them were houses which had been connected with railroad financing in the past. One of the reasons for the Commission's requiring the sale of such securities

through competitive bidding was that it would broaden the market. From present indications it is having the opposite effect. It must be borne in mind that the larger houses which have been obtaining most of such financing, have large and well organized distributing organizations which are not available to the smaller houses. Frequently the larger houses will merely head a distributing syndicate which may take in numerous other investment bankers. The fact is that these large transactions of railroad financing can not, for practical reasons, be handled by a single bidder alone. Behind every such bid must be a financial organization, generally country wide in extent, competent to handle the issue, and this in itself will eventually necessitate combinations tending to reduce the number of bidders.

At their 1926[1] convention the Investment Bankers' Association of America, which may fairly be said to represent the opinion of that large group who are concerned in buying and selling railroad securities of all kinds and who are, therefore, vitally interested in any government regulation affecting them, went on record as criticising the action of the Commission in compelling carriers to seek competitive bids in connection with their offerings of equipment-trust certificates. This criticism was on the grounds that this method of selling such securities had so far resulted in the railroads receiving exceptionally high prices. According to the Railway Securities Committee of the Association these prices were the result of the demand for securities of any kind, by investment bankers and the public, which had been of a most exceptional nature during the few months that this method of sale had been in effect. It was felt that in good times similar high prices might be realized but it was questioned whether it was wise for the railroads to be forced to give up their custom of having recognized bankers responsible for the sale of their securities and the care of their markets. In fact the Committee went on record to the effect that despite the fact that many members of the Association were glad to have an opportunity to purchase, directly from the

[1] Proceedings of the 14th Annual Convention, I. B. A. of A.

carriers, securities which have heretofore not been available in that manner; their opinion was that the securities of companies which are brought out at "right" prices rather than at too high prices are in the long run more popular, and that the continuous borrower who sells his securities to bankers of his own choice on a reasonable basis receives the most for them in the end.

This statement of the Association should not be considered as inferring that railroad securities under the regulation of the Interstate Commerce Commission have in all cases been brought out at too high prices but as a recognition of the danger inherent in selling securities at prices which will not be maintained. The Commission has not insisted on too high prices and it is the writer's belief that they should always have the right to set a minimum price for each issue else one of their important functions would be taken from them—that of seeing that the railroads do not have to pay too much for their funds. Bankers seem to feel, however, that there is a tendency for the Commission to insist on obtaining the last possible cent for the carriers in any particular case without thinking of the effect that the sale of a too highly priced security may have on the future market for the issue of the carrier in question. The Commission is interested in seeing the carriers obtain high prices for their securities while the bankers are interested in paying a price which will enable them to make a profit and at the same time distribute the securities to investors at a figure which will make the investment attractive. It is felt that the Commission has lost sight of the very important fact that any issue of securities of any kind must be sold so that the average investor will buy and be glad that he bought and want to buy the carrier's securities again. The price must be such that the banker can make a profit and it is felt by some that the Commission seems to consider the difference between what the banker pays the carrier and what they charge the investing public for the same security is all profit. This is not so since the cost of distribution is heavy today and this margin includes the profit to the originating banker as well as the profit to the distributor, costs of advertising and selling and other charges. If the bankers are not permitted to make a profit on railroad securities they

will not care to handle them. Moreover, if they are brought out at prices which are too high and which result in the securities selling a point or two under the offering price within a few weeks of their first sale the investors will hesitate to buy them, fearing that they will have to take a loss.

In any event it would seem that the Commission was wise in permitting any change in the manner of selling railroad securities, to take place through a process of evolution rather than revolution and certainly the type of security which they have selected for sale by the new method is that which is best suited to competitive bidding. Moreover, as has already been mentioned in a previous chapter, certain carriers have themselves taken the initiative in bringing about a change in the method of sale of their securities. The matter may be said to be in an experimental stage and if the experiment should prove successful with one type of security under the rules of the Commission, or with other types under the carrier's own initiative, it may possibly come into general use. On the contrary should the experiment not be as successful as the Commission apparently anticipates it will be an easy matter for them to change the situation.

In defense of the Commission it should be recognized that it is often difficult to say just where regulation leaves off and management begins. So many of the activities of carriers are today directly under the control of the Commission that the area left open for the free action of the boards of directors of such carriers is considerably limited. Of this area left open for free action the part devoted to questions of finance is perhaps the largest and surely not the least important. It would seem to be the best policy for the Commission to refrain from entering that field unless upon the clearest evidence of public necessity for so doing. Unless the management of a road proposes a course of action which is clearly opposed to public interest the Commission should refrain from interfering with their judgment, even though the terms of the Transportation Act of 1920, when literally construed, may give them the power to do so. Congress has relied upon private management and enterprise for providing an efficient transportation service. This would seem

to imply that the Commission, in carrying out their regulatory task, should leave all possible scope to the carrier's managers, subject to considerations clearly affecting public welfare.

It appears that Federal control has not unduly restricted the carriers in taking advantage of favorable situations in the money market and the tendency seems to be toward quicker and quicker action on security applications as they come up for consideration. The carriers seem to feel that the Commission gives as prompt attention to applications as is possible from such a regulatory body and this opinion is shared by the bankers. All government regulation tends to bureaucracy, delay, undue expense and waste of time by all the parties concerned. The Finance Committee (Division Four of the Interstate Commerce Commission) is, however, doing all it can considering that it is handicapped by limited appropriations. The writer does not see how the work could be done very differently considering the difference of opinion among the Commissioners which is, in itself, a good thing since it develops and gives scope to all points of view. No matter how simple the case, a day must be set for a consideration of each one by itself and ample time must be allowed for each. Any government bureau of this nature is handicapped in expediting its business because care must be taken lest it fail to give everyone interested an opportunity to be heard due to fear of criticism by Congress; and also lest through a short cut it might be guilty of an error of judgment from which criticism might result.

So far as the writer has been able to ascertain the fear that Federal control would prove deceiving to investors; in that the Commission would approve the sale of an issue of securities at a certain price, thereby giving them a value which might or might not prove to be correct; has not materialized. Investors, apparently, do not rely upon the judgment of the Commission. In fact very few investors know that the Interstate Commerce Commission has anything to do with the railway securities which they buy. This is also true of the average "commercial banker" as distinguished from the "investment banker." Correspondence which the writer had with some fifty prominent members of the American Bankers' Association throughout the

country revealed the fact that many, while they knew of the work of the Commission in rate matters, were entirely unaware of its work in connection with railroad securities. This would seem to emphasize the importance of the investment banker and the reliance which buyers of securities place upon their judgment. At the same time it would appear to open the average banker to criticism on the score of neglect in not informing himself on a matter with which he should be familiar since railroad securities, particularly bonds, are eligible in most States for savings banks, trust funds, insurance investments, and are purchased also by the commercial banks, both for the utilization of their commercial funds and for clients.

There are one or two minor points in connection with the administration of the Act and with the law itself which are commented upon by railroad men and which deserve to be mentioned here. One of these is the fact that in making applications for the issuance of securities it is necessary to file with the Commission a complete statement of the terms under which the sale of the securities in question is to be made and copies of all agreements and contracts with respect to their sale or underwriting. When planning a security issue it is at many times difficult, if not impossible, for the carrier to know just what market conditions will be at the time the securities are ready for issue and the making of definite terms and agreements so far in advance may not be to the best interests of the railroad. This difficulty is overcome in a measure by the carrier making application for authorization of the security issue with the statement that no agreements have as yet been made for its sale. This method of procedure is permitted by the Commission, as has been discussed in a previous chapter.

There is also some feeling that because of the many reports required in connection with security regulation it is more difficult to do business. This matter might be simplified somewhat if the Commission saw fit.

Generally speaking, railroad securities have been improved and the public afforded greater protection through the Interstate Commerce Commission's supervision. It is necessary only to go back in the history of railroad financing to the period

prior to the era of Federal regulation of this part of the railroad business to find many instances of unjustified procedure on the part of directors which resulted in their personal gain at the expense of the public and the stockholders, as well as the railroad properties.[2] The carriers themselves are perhaps the ones most vitally concerned in the matter of security regulation and they have no objection to the Commission laying down general rules which, if observed, will insure the receipt of fair value for any securities sold and the expenditure of the proceeds for proper purposes, but they deplore any encroachment upon the functions of financial management.

One of the most important things that a railway can do, however, is to establish confidence in the minds of the public as to the management of the property as well as the judgment of the expenditure of its funds, which are received from the sale of its securities. The approval of a duly authorized commission with expert examiners in addition to the action of the carrier's board of directors can not help but add additional weight to the securities of any particular road, from an investment standpoint, despite the fact that investment bankers say that such approval is not considered by the investor as of paramount importance; nor is it so considered by the bankers themselves. It is important to know, however, that nothing can be hidden by the carriers if they desired to do as so many of them have done in the past. It may be a burden upon the ones who would be fair and honest without regulation to be compelled to go through the formalities required by the Commission, but it seems to be the only way in which the good results arising from regulation by the Interstate Commerce Commission can be accomplished.

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[2] See Appendix C.

Chapter IX

Summary and Conclusions

In the beginning the individual States undertook the regulation of the issuance of railroad securities but this did not prove satisfactory either to the railroads or to the public. After a number of years of agitation, therefore, the Transportation Act of 1920 took this regulation out of the hands of the various State Commissions and definitely placed it in the hands of a Federal agency; the Interstate Commerce Commission.

The Interstate Commerce Commission at once took steps to assume this new power and issued several orders giving directions which were to be followed by the carriers in making applications for the issuance of securities. These directions and regulations, while detailed, are about as simple as possible under the circumstances and little objection has been raised by the carriers on this score.

There are certain findings which the Commission must satisfy itself on according to the law. In other words, the issue of securities must be for a lawful object within the corporate purposes of the carrier and at the same time compatible with the public interest. Moreover, the issue of securities must be reasonably necessary and appropriate for the purpose for which it is put forth and must not be of such a nature as to impair the ability of the carrier to perform its duty to the public which it serves. The Commission bases all its orders upon these fundamental findings.

Various State Commissions as well as certain carriers have raised the question of the jurisdiction of the Interstate Commerce Commission over railroad securities. There seems to be no question, however, but that this power has been definitely granted to the Federal agency by the words of the Transportation Act of 1920. The Commission has taken the stand that it has absolute jurisdiction, although it is most reasonable in considering State regulations wherever necessary.

In applying the law to the practical problems of railway

financing which have arisen the Commission has been careful to see that any proposal is "compatible with the public interest" as required by the law. They do not consider it in the interest of the public, for example, for a carrier to use the proceeds from the sale of securities for investment in property not to be held for or used in the transportation service. Nor are securities permitted to be issued where the probability can not be shown of earnings sufficient to pay the costs of operation and of fixed charges in addition to some surplus for dividend and other purposes. The Commission is also careful to guard against overcapitalization, realizing as it does that an overcapitalized road tends to defeat the purpose of the Transportation Act. Some very important rules have been laid down as to just what assets should be considered as capitalizable and what should not be so considered.

The Commission considers the purpose of the issue of securities as more important than the type of bond or other security which is to be issued, though they have taken occasion to dictate to one or two carriers on this matter. It is felt that when a carrier is in the fortunate position of being able to obtain additional capital through the sale of stock it should do so rather than add to its funded debt by the sale of bonds. If a carrier desires to issue stock dividends it must meet the conditions which have been laid down by the Commission with the idea of preventing overcapitalization and protecting the interests of the investors and public as a whole. In addition, the Commission does not approve the centering of control of large transportation systems in the hands of those who have made a relatively small investment therein. As a rule, therefore, the issuance of stock without voting power has not been approved. The Commission has been most reasonable in permitting the carriers to make arrangements for the sale of securities prior to their receiving the formal approval required by the Act. This has enabled the railroads to take advantage of favorable situations in the money market.

When railroad properties are reorganized following receiverships, the Commission, in order to guard against overcapitalization and the dangers incident thereto, concerns itself with the

securities to be issued and also with the fees which the re-organization managers charge for their services. The Commission in its handling of re-organizations tries to place the roads concerned, on such firm footings that recurring receiverships will be a thing of the past.

The authorization of security issues is an important part of the Commission's power over consolidations of railroad properties. Carriers desiring to issue securities in connection with such projects will be expected to live up to certain fundamental principles. They should be prepared among other things to show the Commission that the new property would, in the first place, not be overcapitalized; in the second place, that the new financial plan was sound, giving just treatment to all concerned; and in the third place that the control of the property would rest in the hands of the bona fide stockholders and not with some group which had obtained it without a corresponding ownership of common stock.

In connection with the construction of new lines and other projects involving new construction, the power of the Commission over security issues is secondary to their power to grant or deny the certificates of public convenience required by the Transportation Act. If such certificates are issued, the securities required by the project are issued as a matter of course. The possibility of earnings being sufficient as well as the financial plans are considered by the Commission, however, before authorizing the certificate of public convenience as a general rule.

The control of the Commission has been interpreted to extend to the offering price and method of sale of railroad securities. The law provides that applications shall be granted or denied upon such terms and conditions as the Commission may deem necessary or appropriate. They have frequently taken occasion to raise the price at which securities are to be offered and have also stated that one type of securities; *i.e.*, equipment-trust certificates, shall be sold only through competitive bidding. More criticism of the work of the Commission has arisen over the question of method of sale for securities than on any other point arising from security regulation.

The public has such a deep interest in the proper development

and functioning of the transportation systems of the country that it is very proper that the capitalization of those systems and the issuance of their securities should be regulated by the Federal Government to such an extent and in such a manner as will assure honest and provident financing. As a general rule, a railroad company that is overcapitalized cannot earn a fair return on the face value of its securities. In such cases, however, there is a natural tendency on the part of the company to pay interest and dividends and to use for this purpose money which is in part made available by the failure to properly maintain its properties. If this method is followed, the physical properties deteriorate and the service of the road to the public diminishes. If, on the other hand, the company follows the policy of not paying its interest charges or dividends, the price of its securities fall and its credit becomes impaired. In its weakened credit position the company finds it difficult to market its securities except at very high rates, if at all. It cannot furnish the public with adequate service because it finds it impossible to obtain the money with which to provide the additional facilities required by the constantly expanding needs of the country for transportation. It has been estimated that for the next ten years the railroads of this country will need to invest on the average of $787,000,000 a year in additions to their already existing facilities. This expenditure will be over and above the usual expenditures for maintenance. Most of this money will have to be borrowed through the sale of securities of various types which makes sound financing of primary importance. Railway development and improvements are dependent on the capital of investors and their readiness to place it in railroad securities.[1] The promotion of sound financing is,

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[1] The Railroad Owners' Association reports that on September 1, 1925, the banks, national, state and savings, both stock and mutual owned about $1,680,950,000 of railroad securities. This figure includes both stock and bonds but it is estimated that about ten per cent is in stock. Life Insurance companies on the same date owned about $2,195,000,000 of railroad securities with about the same proportion estimated as in stock. According to the records of the railroad companies, there are more than 950,000 registered holders of stock including both institutions and individuals. Owing to duplications and also to the fact that many own stock in several companies it is impossible to state just how many individuals and institutions this

therefore, an essential part of a constructive program of Government regulation of carriers.

As has been pointed out in this study, the regulation of railway securities by the Inter State Commerce Commission has been successful in so far as the Commission has laid down general rules which are to be followed by the carriers. No one objects to such general regulation and it is felt to be necessary as a proper protection not only to the public in general, to the owners of railroad securities, but also to the railroads themselves. The danger in the situation is where the Commission begins to assume the functions of management and their error on this score has been their recent requirement that equipment-trust certificates shall be sold through a system of competitive bidding. This is a mistake from the standpoint of the railroads, the bankers and the investing public. Should the system be applied to all railroad securities either by the action of the Commission or an amendment to the Transportation Act, it would result in a most unfortunate situation. So far as Federal regulation prevents mismanagement, it strengthens the investment position of all classes of railroad securities, but where it assumes the functions of management, it is likely to have the opposite effect.

The writer has heard no one advocate the doing away with Federal regulation since it is a part of that constructive attitude toward railroad regulation naugurated by the Transportation Act of 1920. One of the chief difficulties in the way of obtaining regulation under which the carriers could earn a fair return in the past has been based on the public prejudice caused by the attacks which had been made upon railroads for manipulation of their finances. Federal regulation has removed any such prejudices from the minds of the public and in so doing has accomplished as much, if not more, than was expected of it by the framers of Section 20a of the Transportation Act of 1920.

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represents. There has never been an accurate list of railroad bondholders compiled but from estimates made by the Railroad Owners' Association it is believed that the number of holders would approximate 1,000,000 individuals and institutions.

APPENDIX A

The Interstate Commerce Act Section 20-a (41 Stat. L., 494) Regulation of Security Issues by Railroads

(1) That as used in this section the term "carrier" means a common carrier by railroad (except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation) which is subject to this Act, or any corporation organized for the purpose of engaging in transportation by railroad subject to this Act.

(2) From and after one hundred and twenty days after this section takes effect it shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed "securities") or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

(3) The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any securities so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of the foregoing paragraph.

(4) Every application for authority shall be made in such form and contain such matters as the Commission may prescribe. Every such application,

as also every certificate of notification hereinafter provided for, shall be made under oath, signed and filed on behalf of the carrier by its president, a vice-president, auditor, comptroller, or other executive officer having knowledge of the matters therein set forth and duly designated for that purpose by the carrier.

(5) Whenever any securities set forth and described in any application for authority or certificate of notification as pledged or held unencumbered in the treasury of the carrier shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of by the carrier, such carrier shall, within ten days after such sale, pledge, repledge or other disposition, file with the Commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the Commission.

(6) Upon receipt of any such application for authority the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which the applicant carrier operates. The railroad commissions, public service or utilities commissions, or other appropriate State authorities of the State shall have the right to make before the Commission such representations as they may deem just and proper for preserving and conserving the rights and interests of their perople and the States, respectively, involved in such proceeding. The Commission may hold hearings, if it sees fit, to enable it to determine its decision upon the application for authority.

(7) The jurisdiction conferred upon the Commission by this section shall be exclusive and plenary, and a carrier may issue securities and assume obligations or liabiities in accordance with the provisions of this section without securing approval other than as specified herein.

(8) Nothing herein shall be construed to imply any guaranty or obligation as to such securities on the part of the United States.

(9) The foregoing provisions of this section shall not apply to notes to be issued by the carrier maturing not more than two years after the date thereof and aggregating (together with all other then outstanding notes of a maturity of two years or less) not more than 5 per centum of the par value of the securities of the carrier then outstanding. In the case of securities having no par value, the par value for the purposes of this paragraph shall be the fair market value as of the date of issue. Within ten days after the making of such notes the carrier issuing the same shall file with the Commission a certificate of notification, in such form as may from time to time be determined and prescribed by the Commission, setting forth as nearly as may be the same matters as those required in respect of applications for authority to issue other securities: Provided, That in any subsequent funding of such notes the provisions of this section respecting other securities shall apply.

(10) The Commission shall require periodical or special reports from each carrier hereafter issuing any securities, including such notes, which shall show, in such detail as the Commission may require, the disposition made of such securities and the application of the proceeds thereof.

(11) Any security issued or any obligation or liability assumed by a carrier, for which under the provisions of this section the authorization of the Commission is required, shall be void, if issued or assumed without such authorization therefore having first been obtained, or if issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption; but no security issued or obligation or liability assumed in accordance with all the terms and conditions of such an order of authorization therefore as modified by any order supplemental thereto entered prior to such issuance or assumption, shall be rendered void because of failure to comply with any provision of this section relating to procedure and other matters preceding the entry of such order of authorization. If any security so made void or any security in respect to which the assumption of obligation or liability is so made void, is acquired by any person for value and in good faith and without notice that the issue or assumption is void, such person may in a suit or action in any court of competent jurisdiction hold jointly and severally liable for the full amount of the damage sustained by him in respect thereof, the carrier which issued the security so made void, or assumed the obligation or liability so made void, and its directors, officers, attorneys, and other agents, who participated in any way in the authorizing, issuing, hypothecating, or selling of the security so made void or in the authorizing of the assumption of the obligation or liability so made void. In case any security so made void was directly acquired from the carrier issuing it, the holder may at his option rescind the transaction and upon the surrender of the security recover the consideration given therefor. Any director, officer, attorney or agent of the carrier who knowingly assents to or concurs in any issue of securities or assumptions of obligation or liability forbidden by this section, or any sale or other disposition of securities contrary to the provisions of the Commission's order or orders in the premises, or any application not authorized by the Commission of the funds derived by the carrier through such sale or other disposition of such securities, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $1,000 nor more than $10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

(12) After December 31, 1921, it shall be unlawful for any person to hold the position of officer or director of more than one carrier, unless such holding shall have been authorized by order of the Commission, upon due

showing, in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby. After this section takes effect it shall be unlawful for any officer or director of any carrier to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of an operating carrier from any funds properly included in capital account. Any violation of these provisions shall be a misdemeanor, and on conviction in any United States court having jurisdiction shall be punished by a fine of not less than $1,000 nor more than $10,000, or by imprisonment for not less than one year nor more than three, years, or by both such fine and imprisonment, in the discretion of the court.

APPENDIX B

Sales of Railroad Securities Authorized by the Interstate Commerce Commission in Lots of $1,000,000 or Over. 1920–1926

On the following pages are tabulated the authorizations by the Interstate Commerce Commission to various carriers to sell Bonds, Equipment Trust Certificates, Stock and other Miscellaneous types of securities, in lots of $1,000,000 or over. This analysis shows the price at which the various securities were authorized to be sold, the price paid by the bankers and the price at which they were offered to the public. Where the latter is not shown the issues were either disposed of at private sale or retained by the underwriters.

In tablulating this information, reference was first made to the Finance Dockets and Finance Reports of the Interstate Commerce Commission from which the authorizations to sell and the prices paid by the bankers, in each instance, were obtained. The files of the *Financial and Commercial Chronicle* were then used for information as to the price at which the securities were first offered to the public. In a number of cases the information was inadequate in one or the other of these references. The following tabulations are, therefore, complete only to the extent to which the data in the above sources made possible.

SALES OF RAILROAD BONDS AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER OF DATE OF AUTHORIZATION

DATE DECIDED	I. C. C. REPORTS		CARRIER	PRINCIPAL AMOUNT	INT. RATE %	TO BE SOLD AT NOT LESS THAN	PRICE PAID BY BANKERS	OFFERED TO THE PUBLIC AT—
	VOL.	PAGE						
1920								
9–13–20	65	172	New York Central.....	$25,000,000	7.00	96.50	96.52	100
9–28–20	65	213	Boston & Maine.....	3,843,000	6.00	100.00	100.00	———
9–30–20	65	230	C. & W. Indiana.....	7,000,000	7.50	———	100.00	———
1921								
2–26–21	67	148	Louisville & Nashville.....	3,500,000	6.00	99.00	99.00	103.25
3– 1–21	67	212	Pennsylvania R. R.....	60,000,000	6.50	95.40	95.40	99.25
3–10–21	67	245	Chicago & N. W.....	15,000,000	6.50	95.40	95.40	99.25
4–25–21	67	494	Rensselaer & Saratoga....	2,000,000	6.00	100.00	100.00	103.50
5– 6–21	67	458	N. P. Ry. & G. N. Ry....	230,000,000	6.50	91.50	91.50	96.50
5–14–21	67	615	N. C. & St. L.....	1,000,000	5.00	———	———	———
5–17–21	67	624	St. L.-S. F. Ry.....	4,232,000	6.00	90.00	———	———
5–23–21	67	655	Western Pac. Ry.....	4,180,000	5.00	85.00	85.00	———
6– 1–21	67	696	Norfolk & Western.....	1,213,000	4.50	100.00	103.00	———
7–15–21	70	191	Chicago Union Sta.....	6,000,000	6.50	97.50	97.50	101.00
7–19–21	70	221	Missouri Pacific.....	5,501,500	6.00	90.00	97.00	100
7–29–21	70	274	Illinois Central.....	8,000,000	6.50	93.75	93.75	97.21
9–16–21	70	453	M. St. P. & S. S. M.....	10,000,000	6.50	97.25	97.25	99.00
9–19–21	70	467	Ga. R. R. & Banking Co...	1,500,000	6.00	95.00	95.00	———
10–17–21	70	528	Southern R. R.....	5,655,000	5.00	81.00	82.00	85.00
11–21–21	70	622	Western Pacific.....	3,000,000	6.00	94.00	97.77	100.00
12–14–21	70	708	Dul., Missabe & N.....	1,174,000	5.00	95.00	95.00	———
12–14–21	70	703	B. R. & P.....	3,949,000	4.50	82.50	88.11	91.69
12–17–21	70	749	Louisville & Nashville.....	12,753,000	5.50	96.00	98.00	101.83
12–27–21	70	803	Chicago, Ind. & L.....	3,000,000	6.00	90.00	90.53	94.47

SALES OF RAILROAD STOCK AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER IF DATE OF AUTHORIZATION

DATE DECIDED	I. C. C. REPORTS		CARRIER	PRINCIPAL AMOUNT	INT. RATE %	TO BE SOLD AT NOT LESS THAN	PRICE PAID BY BANKERS	OFFERED TO THE PUBLIC AT—
	VOL.	PAGE						
1922								
1-10-22	71	16	Oregon Short Line	$16,424,000	5.00	91.00	91.00	94.65
1-14-22	71	50	Southern R. R.	30,000,000	6.50	90.50	90.50	94.78
1-17-22	71	70	C. B. & Q.	30,000,000	5.00	92.50	93.50	97.77
2- 4-22	71	95	Great Northern	30,000,000	5.50	93.125	93.125	96.45
2-23-22	71	143	Richmond Term. Ry.	3,380,000	5.00	92.75	92.75	96.24
3-15-22	71	249	Jacksonville Term. Co.	1,100,000	6.00	95.00	103.00	106.55
3-17-22	71	267	Erie	5,000,000	7.00	———	100.00	103.71
3-30-22	71	354	New York Central	60,000,000	5.00	90.00	91.00	94.38
4-20-22	71	435	Missouri Pacific	18,000,000	6.00	94.875	94.875	98.68
5- 3-22	71	583	Northern Pacific	115,534,300	5.00	90.00	91.50	96.00
6- 6-22	71	808	C. St. P., M. & O.	2,700,000	5.00	93.50	93.50	Private
6- 7-22	71	821	C. & N. W.	2,233,000	5.00	100.00	100.00	Private
6- 9-22	71	842	Cleve. Union Term. Co.	12,000,000	5.50	92.50	95.75	95.80
6-17-22	72	10	Cambria & Indiana	1,000,000	6.00	97.75	97.75	101.22
6-21-22	72	47	Chicago Union Sta.	6,150,000	5.00	97.00	97.00	Private
6-30-22	72	104	New York Central	25,000,000	5.00	90.00	91.50	94.39
8- 3-22	72	357	Virg. & Western	1,500,000	5.00	95.00	95.00	———
8- 7-22	72	389	C. I. & W.	1,000,000	5.00	70.00	70.00	75.02
8-12-22	72	397	N. Y. C. & St. L.	7,274,000	6.00	100.00	100.00	100.00
9- 9-22	72	511	C. R. I. & P.	1,000,000	4.00	83.50	84.60	———
10- 4-22	72	669	C. R. I. & P.	5,000,000	4.00	85.00	85.00	87.34
10- 6-22	72	688	St. P. & K. C. St. L.	2,000,000	4.50	83.50	———	———
10-11-22	72	695	B. R. & P.	4,500,000	4.50	88.00	94.77	92.35
11-21-22	76	114	Boston & Maine	4,000,000	6.00	87.89	87.89	———
12-28-22	76	408	Carolina, Clinch. & O.	9,500,000	6.00	91.50	91.50	96.63

SALES OF RAILROAD BONDS AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER OF DATE OF AUTHORIZATION

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	VOL.	PAGE						
1923								
1–20–23	76	478	N. Y. L. & W.	$10,000,000	4.50	90.85	95.00	83.13
1–25–23	76	505	Northern Pacific	10,000,000	5.00	96.50	96.50	99.25
1–29–23	76	499	Indianapolis U. Ry.	4,000,000	5.00	96.50	96.50	97.85
3–17–23	76	701	Illinois Central	13,447,000	5.00	96.125	96.125	99.00
4–16–23	79	209	Chi., A. & So.	1,105,000	6.00	85.00	———	———
4–28–23	79	243	C. M. & St. P.	10,000,000	5.00	90.00	———	———
5– 8–23	79	334	Boston & Providence	2,170,000	5.00	100.00	100.00	———
6–13–23	79	664	Cleve. Union Term.	15,000,000	5.00	90.00	92.75	96.46
7– 9–23	79	763	Northwestern Pac.	1,208,000	4.50	95.00	95.00	———
9–25–23	82	321	Louisville & Nash.	14,000,000	5.00	93.00	93.00	95.31
9–25–23	82	325	Port Arthur C. & D. Co.	2,000,000	6.00	94.00	94.50	98.50
9–26–23	82	328	United N. J., R. R. & C.	1,824,000	4.50	90.00	94.00	———
9–26–23	82	333	Union Pacific	20,000,000	5.00	97.00	97.00	97.59
10–27–23	82	585	Pere Marquette	12,826,000	5.00	90.00	90.25	93.94
11–22–23	82	740	St. Paul U. Depot Co.	15,000,000	5.00	91.50	93.75	96.48
11–30–23	82	769	Chicago & N. W.	15,250,000	5.00	90.50	90.50	93.50
12– 8–23	86	6	Southern	20,000,000	6.00	93.00	93.00	96.54
12–29–23	86	169	C. C. C. & St. L.	20,000,000	5.00	90.00	91.50	93.91
1924								
1– 5–24	86	199	Southern	1,025,000	5.00	92.00	94.25	———
1–16–24	86	247	Chicago & E. Ill.	2,605,300	5.50	95.00	———	———
1–16–24	86	254	Virginian Term.	5,000,000	5.00	91.00	91.00	94.41
1–21–24	86	318	Old Colony	3,500,000	5.50	95.00	95.00	99.00
1–31–24	86	332	L. V. Harbor Term. Ry.	10,000,000	5.00	92.50	92.50	95.52

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	VOL.	PAGE						
2– 7–24	86	358	C. M. & St. P.	$14,000,000	6.00	92.25	92.25	96.37
2–11–24	86	362	C. B. & Q.	20,000,000	5.00	95.00	95.00	98.22
2–21–24	86	449	Phila. Balto. & Wash.	10,000,000	5.00	96.00	96.00	100.00
2–27–24	86	457	I. C. & C. St. L. & N. O.	11,604,000	5.00	91.25	91.25	93.88
3–10–24	86	529	Chicago Union Sta.	7,000,000	5.00	94.75	94.75	97.89
3–25–24	86	585	Buffalo Creek	1,000,000	5.00	92.15	92.15	94.00
3–29–24	86	578	Central of Ga.	5,000,000	5.50	94.00	94.00	97.00
4–29–24	86	818	St. L., San Francisco.	8,500,000	5.50	88.50	88.50	92.09
5–12–24	90	49	Alabama & Vicksburg.	2,500,000	5.00	94.06	94.06	97.76
5–16–24	90	66	Great Northern	15,000,000	5.00	90.00	90.00	93.12
5–23–24	90	54	N. O. T. & M.	7,734,000	5.50	94.50	95.00	98.81
5–24–24	90	95	C., Ind. & L.	1,000,000	6.00	96.00	96.00	98.49
6– 7–24	90	200	N. Y., C. & St. L.	26,058,000	5.50	90.00	90.75	93.97
6–17–24	90	311	Baltimore & Ohio	35,000,000	6.00	96.50	96.50	100.00
6–17–24	90	235	Chicago & N. W.	3,150,000	5.00	98.50	98.50	Private
7– 2–24	90	341	Term. R. R. Asso. St. L.	2,000,000	4.00	81.50	82.00	84.90
7– 9–24	90	379	Lehigh & N. E.	2,000,000	5.00	100.00	100.50	Private
8– 1–24	90	488	Virginian	10,000,000	5.00	93.00	93.00	95.90
8– 1–24	90	502	Detroit & Ironton	7,500,000	5.00	100.00	——	Private
8–13–24	90	537	Lehigh Valley	12,000,000	5.00	96.50	96.50	100.00
8–13–24	90	539	Fla., Western & N.	7,000,000	7.00	92.50	92.50	100.00
8–20–24	90	560	Northern Central	8,300,000	5.00	99.00	99.00	101.86
8–20–24	90	557	Connecting Ry. (Penna.)	1,545,000	5.00	99.00	99.00	Private

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8–20–24	90	563	P. Y. & A. (Penna. R. R.)	$2,000,000	5.00	99.00	99.00	Private
8–27–24	90	571	B. R. & P.	3,000,000	4.50	85.00	85.00	87.66
9– 5–24	90	647	Baltimore & Ohio	75,000,000	5.00	95.50	95.50	98.62
9–12–24	90	660	Peoria & Pekin Union	3,200,000	5.50	95.00	95.00	100.00
9–12–24	90	667	Louisville & Nash.	16,000,000	4.50	91.50	91.50	93.89
9–23–24	90	693	Fla. East Coast	15,000,000	5.00	92.00	93.00	96.45
10–21–24	90	819	Pennsylvania	50,000,000	5.00	95.50	95.50	98.30
10–24–24	94	34	N. O., T. & M.	2,784,000	5.50	95.00	95.50	98.56
10–25–24	94	25	T. P. & M. P. Terminal	5,000,000	5.50	97.50	97.50	100.00
11– 1–24	94	71	Denver & R. G. W.	3,000,000	6.00	100.00	100.00	——
11– 3–24	94	79	A. & M. Ry. & Term.	3,531,000	5.00	90.00	90.00	93.50
11–14–24	94	83	N. O., T. & M.	3,752,000	5.50	99.00	——	——
12– 2–24	94	209	Delaware & Hudson	4,600,000	4.00	88.00	88.00	90.00
12–10–24	94	237	Portland Terminal	1,800,000	5.00	91.00	——	96.75
12–15–24	94	260	Chicago Union Station	7,000,000	5.00	96.50	96.50	97.75
12–23–24	94	293	C., R. I. & P.	1,000,000	4.00	84.50	——	——
12–31–24	94	348	Norfolk & Western	6,000,000	4.00	88.00	88.00	89.75
1925								
1–15–25	94	423	Kansas City Southern	3,000,000	5.00	86.00	86.00	89.00
1–26–25	94	491	Chi. & W. Indiana	16,092,000	5.50	93.50	93.75	97.00
3– 2–25	94	634	N. Y., N. H. & H.	23,000,000	6.00	100.00	100.00	100.00
3–17–25	94	639	Western Pacific	4,000,000	5.00	90.00	94.25	——
3– 2–25	94	648	Wabash	12,500,000	5.50	93.00	93.00	96.00

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	VOL.	PAGE						
4– 1–25	94	706	D., T & I.	$1,181,000	5.00	100.00	100.00	Private
4– 2–25	94	715	N., O. T., & M.	3,752,000	5.00	97.00	97.00	99.50
4– 8–25	94	721	P., C., C. & St. L.	26,000,000	5.00	96.00	96.00	99.00
4–22–25	94	828	Southern Pacific	6,425,500	4.00	90.00	———	91.00
4–30–25	99	46	Central of N. J.	1,500,000	4.50	98.00	———	———
5– 8–25	99	111	Fla. E. Coast	15,000,000	5.00	91.50	91.75	98.00
5–15–25	99	113	Southern	2,000,000	5.00	100.00	101.25	———
5–20–25	99	127	Missouri Pacific	25,000,000	6.00	96.75	96.75	99.75
6–20–25	99	177	Cleve. Union Term.	15,000,000	5.00	98.21	98.21	Private
6–22–25	99	299	Illinois Central	7,094,000	5.00	97.50	97.50	100.00
7–20–25	99	557	Kansas City Term. Ry.	16,908,000	4.00	84.25	84.25	86.50
8– 7–25	99	446	Central Pacific	40,000,000	5.00	95.00	95.00	98.00
9–12–25	99	661	Old Colony	5,598,000	5.00	98.00	98.00	100.50
9–22–25	99	670	Wheeling & Lake Erie	1,650,000	5.00	85.00	———	———
9–25–25	99	715	Virginian	7,500,000	5.00	95.50	95.50	98.00
11– 2–25	105	48	Seaboard Air Line	10,000,000	6.00	92.25	92.25	94.75
11–14–25	105	93	N. O., T. & M.	1,500,000	5.50	98.00	100.00	———
11–14–25	105	93	N. O., T. & M.	1,500,000	5.00	93.00	93.50	96.00
11–20–25	105	144	N. Y., C. & St. L.	9,575,000	5.50	95.00	96.00	99.00
11–28–25	105	155	N. O., T. & M.	1,700,000	5.50	98.00	———	———
1926								
1– 5–26	105	314	Maine Central	4,000,000	6.00	97.50	97.50	101.00
1–11–26	105	331	Arizona Eastern	13,077,000	5.00	100.00	100.00	Private

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	VOL.	PAGE						
2– 2–26	105	402	N. Y. Connecting Ry.....	$3,333,000	5.00	97.25	97.25	99.50
2– 4–26	105	490	Southern.....	1,774,000	5.00	100.00	103.50	——
2–23–26	105	529	Balto. & Ohio.....	30,000,000	5.00	92.50	92.50	95.50
3– 9–26	105	594	Fla. E. Coast.....	15,000,000	5.00	95.00	95.00	98.00
3–10–26	105	609	Tenn. Central.....	1,500,000	6.00	95.00	95.00	100.00
3–17–26	105	681	Central of Ga.....	3,000,000	5.50	94.75	94.75	97.00
3–24–26	105	723	Delaware & Hudson.....	2,196,000	4.00	90.00	90.00	92.00
4–24–26	111	121	Chicago & N. W.....	23,663,000	4.75	100.00	100.00	102.50
5– 6–26	111	183	Kans., Okla. & Gulf.....	1,999,000	6.00	100.00	100.00	96.00
5– 5–26	111	204	Norfolk & Western.....	6,000,000	4.00	90.00	92.55	93.75
5–24–26	111	259	T. P., M. P. Tenn.....	1,040,000	5.50	99.00	99.00	——
5–27–26	111	269	C., I., & L. Ry.....	1,000,000	5.00	95.50	95.50	98.00
6–15–26	111	406	Western Pacific.....	2,600,000	5.00	92.00	99.75	——
7– 8–26	111	447	Great Northern.....	15,000,000	4.50	91.50	91.50	94.00
7–17–26	111	514	Galveston Wharf Co.....	1,250,000	5.50	95.00	95.00	100.00
8– 4–26	111	602	M., N., & S.....	1,200,000	6.00	95.00	——	——
8– 9–26	111	623	Seaboard Air Line.....	8,000,000	6.00	93.25	93.25	95.50
8– 9–26	111	640	N. O. T. & M.....	4,600,000	5.00	97.50	97.50	100.00
8– 4–26	111	657	Intl. Great No.....	6,000,000	5.00	92.75	92.75	95.00
8–23–26	111	681	Wheeling & Lake E.....	2,000,000	5.00	94.00	98.00	99.15
9–20–26	111	786	Wabash.....	15,500,000	5.00	93.00	93.00	95.50
9–29–26	117	26	Illinois Central.....	35,000,000	4.75	93.65	93.65	96.50
12– 8–26	117	374	Missouri Pacific.....	13,156,000	5.25	97.00	97.00	99.50
12–30–26	117	513	Ga. & Fla. Ry.....	3,800,000	6.00	87.50	——	——
12–30–26	117	513	Ga. & Fla. Ry.....	1,500,000	6.00	100.00	——	——

SALES OF RAILROAD EQUIPMENT TRUST CERTIFICATES AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER OF DATE OF AUTHORIZATION

DATE DECIDED	I. C. C. REPORTS		CARRIER	PRINCIPAL AMOUNT	INT. RATE %	TO BE SOLD AT NOT LESS THAN	PRICE PAID BY BANKERS	OFFERED TO THE PUBLIC AT—
	VOL.	PAGE						
1920								
9– 2–20	65	144	Long Island R. R.	$1,656,000	6.00	100.00	100.00	96.35
9–30–20	65	159	Pittsburgh & Lake E.	2,400,000	6.50	95.00	96.19	98.10
10–22–20	65	313	Illinois Central	8,107,000	7.00	97.36	97.36	101.00
								103.50
12–14–20	65	469	Chesapeake & Ohio	4,500,000	6.50	95.00	95.00	98.79
								98.13
12–23–20	65	571	Atlantic Coast Line	4,500,000	6.50	94.06	95.70	99.53
								98.82
1921								
2–17–21	67	123	Missouri Pacific	1,836,000	6.50	96.00	96.00	Private
2–26–21	67	151	Louisville & Nash.	11,025,000	6.50	99.00	———	100.00
3– 1–21	67	198	Chicago & N. W.	8,241,000	6.50	97.00	———	100.68
								100.70
3– 8–21	67	237	Illinois Central	3,564,000	6.50	97.00	———	Private
1922								
3–22–22	71	152	Illinois Central	3,255,000	5.50	97.50	97.50	Private
3–11–22	71	228	Union Pacific	6,800,000	5.00	95.00	95.00	Private
4–24–22	71	517	Colo. Southern	1,425,000	5.50	98.61	98.61	———
5– 6–22	71	592	Chesapeake & Ohio	7,635,000	5.50	98.00	98.00	100.00
5–15–22	71	623	Southern	9,300,000	5.50	97.50	97.50	99.86
7– 1–22	72	143	Erie	4,500,000	5.50	96.94	96.94	100.00
7– 5–22	72	161	C. M. & St. P	8,085,000	5.00	96.375	96.375	97.74
7–10–22	72	194	New York Central	27,645,000	5.00	95.495	95.71	98.21

SALES OF RAILROAD EQUIPMENT TRUST CERTIFICATES AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER OF DATE OF AUTHORIZATION

DATE DECIDED	I. C. C. REPORTS		CARRIER	PRINCIPAL AMOUNT	INT. RATE %	TO BE SOLD AT NOT LESS THAN	PRICE PAID BY BANKERS	OFFERED TO THE PUBLIC AT—
	VOL.	PAGE						
7–18–22	72	199	Boston & Maine	$1,815,000	5.50	98.42	99.11	100.48
								100.00
7–26–22	72	297	Wabash	4,245,000	5.00	95.75	95.75	98.16
8– 5–22	72	409	Seaboard Air Line	2,450,000	6.00	97.02	97.02	100.13
8–16–22	72	435	Baltimore & Ohio	6,750,000	5.00	96.40	96.40	Private
8–31–22	72	503	Northern Pacific	4,500,000	4.50	97.50	100.00	97.70
9–28–22	72	611	N. Y., C. & St. L	3,150,000	5.00	98.00	98.00	100.00
10– 3–22	72	665	Illinois Central	6,645,000	4.50	95.00	95.00	97.20
10–11–22	72	705	Nash. Chat. & St. L	1,800,000	4.50	94.89	95.375	97.50
10–18–22	72	749	St. Louis-San Fran	6,000,000	5.00	96.00	96.00	98.40
10–21–22	72	773	Seaboard Air Line	2,560,000	5.50	96.63	96.63	99.23
10–31–22	72	805	Norfolk & Western	6,030,000	4.50	95.50	98.20	98.84
11– 8–22	76	27	New York Central	12,660,000	4.50	95.00	95.00	97.00
12– 2–22	76	219	Interstate R. R.	1,200,000	5.50	100.00	———	100.24
								101.54
12–12–22	76	331	Erie	2,800,000	5.00	97.00	97.00	96.84
6–17–22	72	17	Central of N. J.	2,000,000	6.00	98.00	———	———
1923								
1–31–23	76	559	M., St. P. & S. S. Marie	2,360,000	5.00	97.40	97.40	99.095
2– 2–23	76	589	Baltimore & Ohio	13,875,000	5.00	96.67	96.67	98.77
2– 9–23	76	611	Louisville & Nash.	6,300,000	4.50	96.00	96.00	96.96
2–12–23	76	640	C., M. & St. P.	1,536,000	5.00	97.25	97.25	Private
3–31–23	79	131	Norfolk & Western	7,200,000	4.50	95.50	97.317	98.25
4– 2–23	79	109	Ala., Great So.	2,850,000	5.00	97.00	97.00	98.77

SALE OF RAILROAD EQUIPMENT TRUST CERTIFICATES AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER OF DATE OF AUTHORIZATION

DATE DECIDED	I. C. C. REPORTS		CARRIER	PRINCIPAL AMOUNT	INT. RATE %	TO BE SOLD AT NOT LESS THAN	PRICE PAID BY BANKERS	OFFERED TO THE PUBLIC AT—
	VOL.	PAGE						
4- 2-23	79	135	Southern	$6,750,000	5.00	97.00	97.00	98.76
4- 2-23	79	139	C., N. O., & T. P.	2,700,000	5.00	97.00	97.00	98.77
4- 6-23	79	105	Pennsylvania	31,500,000	5.00	97.25	97.25	99.50
4-12-23	79	182	D. & R. G. W.	4,500,000	5.50	96.50	96.50	99.25
4-18-23	79	199	Western Pacific	5,600,000	5.50	97.25	97.25	100.00
4-20-23	79	219	Chesapeake & Ohio	7,875,000	5.00	96.46	96.46	98.16
5- 2-23	79	275	Maine Central	1,200,000	5.50	99.25	99.25	100.59
5- 3-23	79	271	Union Pacific	5,687,000	4.50	93.50	93.50	Private
5-11-23	79	319	Chicago & N. W.	5,175,000	5.00	96.50	96.50	98.46
5-11-23	79	368	St. L., South W.	2,700,000	5.50	98.00	98.64	100.30
5-16-23	79	389	Illinois Central	14,003,000	5.00	96.50	96.50	98.50
5-17-23	79	445	C., R. I., & P.	8,550,000	5.00	96.1801	96.1801	99.88
								95.92
5-19-23	79	461	Central of Ga.	2,910,000	5.00	95.50	95.50	97.50
5-21-23	79	494	Central of N. J.	3,750,000	5.00	96.00	97.50	99.20
5-23-23	79	519	Cambria & Indiana	1,700,000	5.50	97.15	97.15	99.40
5-28-23	79	527	C., M., & St. P.	13,500,000	5.50	95.50	95.50	98.50
5-28-23	79	531	Erie	7,860,000	6.00	97.00	97.00	99.64
								100.48
5-29-23	79	558	Seaboard Air Line	6,600,000	6.00	95.50	95.50	95.50
								100.00
6- 4-23	79	605	Virginian	5,700,000	5.00	94.587	94.587	96.96
6-15-23	79	669	Boston & Maine	2,115,000	6.00	97.10	97.58	100.00
7- 5-23	79	767	Western Maryland	1,500,000	6.00	95.875	95.875	99.873

SALES OF RAILROAD EQUIPMENT TRUST CERTIFICATES ATHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER OF DATE OF AUTHORIZATION

DATE DECIDED	I. C. C. REPORTS VOL.	I. C. C. REPORTS PAGE	CARRIER	PRINCIPAL AMOUNT	INT. RATE %	TO BE SOLD AT NOT LESS THAN	PRICE PAID BY BANKERS	OFFERED TO THE PUBLIC AT—
7–11–23	79	798	Fla. East Coast	$2,000,000	5.00	96.30	96.30	Private
7–14–23	79	812	New York, Chi. & St. L.	4,275,000	5.00	———	95.06	97.59
7–17–23	82	5	Reading Co.	5,700,000	5.00	100.00	100.00	Private
7–20–23	82	23	Chicago & N. W.	4,755,000	5.00	96.50	96.50	98.46
7–24–23	82	55	Elgin, Joliet & E.	2,000,000	5.00	100.00	100.00	———
8– 6–23	82	135	Wabash	2,010,000	5.50	97.02	97.02	Private
8– 7–23	82	151	Hocking Valley	4,020,000	5.00	94.843	94.843	97.26
9–13–23	82	259	Long Island	1,710,000	5.00	95.50	95.50	Private
9–14–23	82	263	Louisville & Nashville	6,000,000	5.00	96.00	96.46	98.46
10– 3–23	82	351	New York Central	17,340,000	5.00	94.25	94.29	97.34
10– 8–23	82	369	Great Northern	8,625,000	5.00	94.25	94.25	97.34
10–10–23	82	427	Kansas City So.	1,620,000	5.50	97.03	97.03	100.19
								98.50
11–20–23	82	672	Missouri Pacific	3,990,000	5.50	95.375	95.375	98.185
12– 6–23	82	836	Chicago & Alton	5,400,000	6.00	95.00	95.00	99.47
12– 8–23	86	35	Southern Pacific Co.	23,100,000	5.00	95.125	95.125	97.375
12–13–23	86	45	Baltimore & Ohio	7,000,000	5.00	95.00	95.00	97.45
12–17–23	86	61	Chicago & N. W.	6,180,000	5.00	97.50	———	99.30
12–17–23	86	61	Chicago & N. W.	1,560,000	5.00	97.50	———	99.30
12–17–23	86	101	Erie	1,500,000	6.00	97.00	97.00	———
12–31–23	86	204	Mobile & Ohio	1,678,000	5.00	95.50	95.50	97.56
3– 2–23	76	748	Mobile & Ohio	1,600,000	5.00	98.00	98.00	98.79
3– 6–23	76	751	B. R. & P.	1,920,000	5.00	96.75	98.766	100.00

SALES OF RAILROAD EQUIPMENT TRUST CERTIFICATES AUTHORIZED BY TEE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER OF DATE OF AUTHORIZATION

DATE DECIDED	I. C. C. REPORTS		CARRIER	PRINCIPAL AMOUNT	INT. RATE %	TO BE SOLD AT NOT LESS THAN	PRICE PAID BY BANKERS	OFFERED TO THE PUBLIC AT—
	VOL.	PAGE						
7-24-23	82	55	E. J. & E.	$2,000,000	5.00	———	100.00	100.00
1924								
2-19-24	86	441	St. Louis, S. W.	1,800,000	5.50	100.723	100.723	101.84
2-19-24	86	445	N. Y., C. & St. L.	2,865,000	5.00	———	97.71	99.71
3- 6-24	86	491	Seaboard Air Line	1,620,000	6.00	95.50	95.50	99.47
3-19-24	86	553	Norfolk & Western	12,000,000	4.50	96.773	96.773	97.61
3-31-24	86	623	Southern	6,600,000	5.00	97.25	97.25	98.83
4-28-24	86	789	Long Island	1,875,000	5.00	97.56	97.56	Private
3-29-24	86	612	Union Pacific	3,000,000	4.50	93.94	93.94	Private
4-25-24	86	835	Western Pacific	3,105,000	5.50	100.00	100.00	100.37
								102.01
4-28-24	86	841	Pennsylvania	20,100,000	5.00	97.56	97.56	99.50
5-14-24	90	45	Southern Pacific	17,640,000	5.00	97.56	97.56	99.50
5-14-24	90	60	Maine Central	1,300,000	5.50	95.86	97.125	100.19
								101.02
6- 2-24	90	176	New York Central	25,050,000	5.00	98.00	98.00	100.00
6- 6-24	90	321	Carolina, C. & Ohio	1,000,000	5.00	96.50	96.50	97.69
								100.49
7- 5-24	90	381	Chesapeake & Ohio	18,000,000	5.00	98.00	98.00	100.00
7- 8-24	90	385	Hocking Valley	1,740,000	5.00	98.00	98.00	100.00
7-10-24	90	396	Fla. East Coast	1,875,000	5.00	98.25	98.25	99.75
8-18-24	90	549	Great Northern	4,500,000	4.50	96.00	96.74	98.74
9-27-24	90	719	New York Central	20,955,000	4.50	96.89	96.89	98.74
10-10-24	90	793	Pennsylvania	15,750,000	4.50	97.00	97.00	98.75

SALES OF RAILROAD EQUIPMENT TRUST CERTIFICATES AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER OF DATE OF AUTHORIZATION

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	VOL.	PAGE						
10–15–24	90	807	Southern	$7,050,000	4.50	96.25	96.25	98.25
10–22–24	94	12	Baltimore & Ohio	9,504,000	4.50	96.50	96.50	Private
10–22–24	94	1	C., R. I. & Pac	3,760,000	5.00	98.00	98.00	100.33
11– 1–24	94	76	Mobile & Ohio	1,650,000	4.50	96.50	96.50	96.82
11–17–24	94	115	Ga. So. & Fla	1,280,000	4.50	96.50	96.50	100.25 96.82 100.25
11–25–24	94	343	New Orleans, T. & P	1,740,000	5.00	98.46	98.60	100.62
11–26–24	94	145	Missouri Pacific	3,900,000	5.00	98.25	98.25	100.25
11–26–24	94	149	Texas & Pacific	3,285,000	5.00	98.25	98.25	100.25
12– 9–24	94	179	Pittsburgh & W. Va	3,000,000	4.50	97.109	97.109	98.91
12–10–24	94	233	Illinois Central	12,945,000	4.50	97.125	97.125	98.875
12–16–24	94	269	Wheeling & Lake Erie	1,700,000	5.00	98.50	———	———
12–23–24	94	302	Wabash	1,826,000	5.00	98.80	98.80	100.75
12–23–24	94	302	Wabash	2,565,000	5.00	98.80	98.80	100.83
12–30–24	94	337	Norfolk & Western	6,000,000	4.50	97.00	98.86	98.81 100.49
5– 1–24	90	42	Central of N. J.	1,370,000	5.00	98.75	98.75	———
1925								
1– 8–25	94	383	Great Northern	4,250,000	4.50	96.00	96.89	98.51
1– 9–25	94	425	Reading Co	8,000,000	4.50	100.00	100.00	Private
1–20–25	94	434	Great Northern	1,980,000	4.50	96.43	———	———
1–20–25	94	455	Seaboard Air Line	3,390,000	5.00	98.25	98.25	99.55
1–29–25	94	481	N. Y., N. H. & H	3,645,000	5.00	94.77	95.93	97.92

SALES OF RAILROAD EQUIPMENT TRUST CERTIFICATES AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER OF DATE OF AUTHORIZATION

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2–17–25	94	552	Florida East Coast	$1,200,000	4.50	96.00	96.00	98.00
2–14–25	94	559	St. Louis So. Western	1,530,000	5.00	98.80	98.80	100.97
2–25–25	94	567	Missouri Pacific	8,820,000	5.00	98.46	98.46	100.46
3– 2–25	94	613	Central of Ga.	1,410,000	4.50	96.14	96.14	97.64
4– 8–25	94	752	Reading Co.	7,500,000	4.50	100.00	100.00	Private
5– 6–25	99	83	Long Island	1,095,000	5.00	99.25	99.25	Private
5–11–25	99	107	Baltimore & Ohio	8,145,000	4.50	96.68	96.68	98.43
5–16–25	99	121	New York Central	10,530,000	4.50	96.89	96.89	98.74
5–26–25	99	164	Northern Pacific	3,525,000	4.50	96.89	96.89	98.43
6–10–25	99	227	Great Northern	1,155,000	4.50	96.89		
6–24–25	99	303	Southern Pacific	10,491,000	4.50	96.91	96.91	98.66
7–11–25	99	417	Fla. East Coast	1,350,000	4.50	97.125	97.152	
7–31–25	99	564	Virginian	3,600,000	4.50	97.125	97.125	97.34
								100.49
8–18–25	99	581	Rock Island	5,400,000	4.50	96.89	96.89	98.43
8–31–25	99	637	Texas & Pacific	2,475,000	4.50	96.89	96.89	Private
9–12–25	99	663	Chicago & N. Western	5,415,000	4.50	97.00		
9–12–25	99	682	C. M. & St. P.	9,270,000	5.00	97.00	97.6984	98.75
11– 7–25	105	133	Central of Ga.	3,840,000	4.50	96.89	96.89	
12–12–25	105	196	Chesapeake & Ohio	4,920,000	4.50	96.89	96.89	
12–12–25	105	215	Illinois Central	9,240,000	4.50	97.00	97.00	98.75
12–17–25	105	234	Seaboard Air Line	2,820,000	4.50	96.51	96.51	97.73
1926								
1– 9–26	105	337	Mobile & Ohio	1,200,000	4.50	97.00	97.00	99.95
								96.82

SALES OF RAILROAD EQUIPMENT TRUST CERTIFICATES AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER OF DATE OF AUTHORIZATION

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1- 7-26	105	343	Wabash	$4,185,000	4.50	96.25	———	———
1-16-26	105	361	Mo. Pacific	4,830,000	4.50	96.25	96.25	98.00
1-16-26	105	365	Intl. Gt. Northern	1,920,000	4.50	96.25	96.25	100.00 96.26
1-30-26	105	415	Baltimore & Ohio	8,370,000	4.50	97.00	97.00	98.68
2-10-26	105	493	Atlantic Coast Line	5,085,000	4.50	97.125	97.125	98.74
2-18-26	105	517	St. Louis-San Frisco	7,800,000	4.50	97.00	97.00	98.53
3-15-26	105	548	Pittsburgh & W. Va.	2,000,000	4.50	97.49	97.49	Private
3-19-26	105	695	Fla. East Coast	2,700,000	4.50	97.125	97.125	98.74
3-19-26	105	713	Southern	6,900,000	4.50	97.125	97.125	98.465
3-24-26	105	725	Long Island	1,230,000	4.50	97.00	97.00	Private
3-27-26	105	753	Erie	2,190,000	4.50	97.00	97.00	98.16
4- 3-26	105	785	Denver & Rio G.	1,725,000	5.00	99.25	99.25	———
4-19-26	111	73	New York Central	11,172,000	4.50	97.625	97.625	99.10
4-24-26	111	130	Soo Line	1,020,000	4.50	97.7946	97.7946	———
5-18-26	111	237	Illinois Central	5,018,000	4.50	97.20	97.20	———
5-14-26	111	241	Pennsylvania	17,030,000	4.50	97.20	97.20	98.75
5-24-26	111	255	Southern Pacific	5,654,000	4.50	97.20	97.20	———
6-14-26	111	409	Baltimore & Ohio	7,475,000	4.50	97.78	97.78	99.28
6-23-26	111	434	Western Maryland	2,278,000	5.00	100.886	100.886	Private
8-27-26	111	675	Central of N. J.	2,670,000	4.50	99.517	99.517	100.00
9-29-26	117	15	Illinois Central	4,665,000	4.50	*99.517 **98.43	98.815	99.43
10-27-26	117	193	Seaboard Air Line	9,060,000	4.50	95.75	95.75	97.54
10-27-26	117	193	Seaboard Air Line	2,276,000	5.50	97.00	97.00	———
11-27-26	117	365	N. Y., N. H. & H.	4,995,000	4.50	97.777	97.777	———

*If sold at private sale.
**If sold through competitive bids.

SALES OF MISCELLANEOUS SECURITIES AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER OF DATE OF THEIR AUTHORIZATION

DATE DECIDED	I. C. C. REPORTS		CARRIER	TYPE OF SECURITY	PRINCIPAL AMOUNT	INT. RATE %	TO BE SOLD AT NOT LESS THAN	PRICE PAID BY BANKERS	OFFERED TO THE PUBLIC AT
	VOL.	PAGE							
1920									
9–22–20	65	193	Kansas City, Mex. & O...	Rec. Cert.	$1,000,000	6.00	100.00	100.00	Private
10–16–20	65	289	N. Y., N. H. & H.....	Notes	2,000,000	7.00	100.00	100.00	Private
11– 6–20	65	362	Indiana Harbor Belt.....	Notes	2,200,000	7.00	100.00	———	Private
1921									
3– 1–21	67	209	Western Maryland.....	Notes	1,500,000	7.00	100.00	———	———
6– 7–21	67	718	Kansas City Term.....	Notes	2,000,000	6.50	93.33	93.76	100.00
6–24–21	67	803	M., St. P. & S. S. M.....	Notes	2,400,000	6.50	97.50	97.50	Private
12–24–21	70	795	Elpaso & S. W.....	Notes	3,500,000	5.50	100.00	100.00	Private
1922									
3–24–22	71	303	N. Y., N. H. & H.....	Notes	1,796,000	7.00	100.00	100.00	Private
12–27–22	76	353	Chicago & Alton.....	Rec. Notes	2,000,000	6.00	100.00	100.10	Private
1923									
4– 7–23	79	168	Denver & Rio G., W.....	Rec. Cert.	5,000,000	6.00	98.00	98.00	Private
5– 2–23	79	264	Portland Terminal.....	Notes	1,600,000	5.50	99.25	99.25	100.24
6–20–23	79	710	Chicago, R. I. & P.....	Notes	7,000,000	5.50	97.50	97.50	Private
10–26–23	82	593	Kansas City Terminal...	Notes	10,000,000	5.50	97.50	97.50	99.32
10–26–23	82	603	Trans. Miss. Terminal...	Notes	1,000,000	6.50	100.00	100.00	Private

SALES OF MISCELLANEOUS SECURITIES AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER OF DATE OF THEIR AUTHORIZATION

DATE DECIDED	I. C. C. REPORTS VOL.	I. C. C. REPORTS PAGE	CARRIER	TYPE OF SECURITY	PRINCIPAL AMOUNT	INT. RATE %	TO BE SOLD AT NOT LESS THAN	PRICE PAID BY BANKERS	OFFERED TO THE PUBLIC AT
1924									
2–18–24	86	413	Hocking Valley	Notes	$6,000,000	5.00	96.33	97.00	99.25
3–17–24	86	546	Portland Terminal	Notes	1,800,000	5.50	99.25	99.25	100.24
4– 9–24	86	681	Ga. & Fla.	Rec. Cert.	1,600,000	8.00	100.00	100.00	Private
5–24–24	90	89	Wis. Central	Notes	6,000,000	5.50	97.75	97.75	99.57
7–14–24	90	404	C., R. I. & P.	Notes	10,000,000	5.00	97.25	97.25	99.13
7–19–24	90	439	Missouri Pacific	Notes	12,000,000	5.00	97.50	97.50	99.18
9–11–24	90	653	C. R. I. & P.	Notes	5,000,000	5.00	97.50	97.50	99.13
1925									
1–15–25	94	431	Chicago and Alton	Rec. Notes	1,000,000	5.50	100.00	———	———
4–23–25	99	52	Ann Arbor	Notes	1,000,000	6.00	95.00	95.00	99.00
4–29–25	99	55	Wabash	Notes	1,500,000	6.00	100.00	100.00	100.7335
6– 3–25	99	224	Minn. & St. Louis	Rec. Cert.	1,000,000	7.00	100.00	100.00	———
1926									
2–25–26	105	537	Hocking Valley	Notes	6,000,000	5.00	99.25	100.00	———
5–17–26	111	248	Rock Island	Notes	6,000,000	4.50	98.32	98.32	99.32
6–21–26	111	421	Ind. Harbor Belt	Notes	1,500,000	4.50	100.00	100.00	———
8–23–26	111	679	Hocking Valley	Notes	6,000,000	5.00	100.00	100.00	———

SALES OF RAILROAD STOCK AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER IF DATE OF AUTHORIZATION

DATE DECIDED	I. C. C. REPORTS		CARRIER	KIND OF STOCK	PRINCIPAL AMOUNT	TO BE SOLD AT NOT LESS THAN	PRICE AT WHICH SOLD
	VOL.	PAGE					
1920							
12–17–20	65	520	Lehigh & Hudson R.....	Common	$2,986,000	100.00	100.00
1921							
5–23–21	67	651	Missouri Illinois.....	Common	1,500,000	100.00	———
6–10–21	67	731	Detroit & Ironton.....	Common	1,000,000	100.00	100.00
6–25–21	70	7	Interstate R. R.....	Common	3,000,000	100.00	100.00
7– 5–21	70	58	Ark., La., Mo.....	Common	1,000,000	100.00	100.00
8– 4–21	70	296	Flint Belt.....	Common	1,000,000	100.00	100.00
1922							
5–23–22	71	707	Illinois Central.....	Pfd.	10,929,600	100.00	100.00
6– 9–22	71	839	Kansas & Oklahoma.....	Common	1,400,000	100.00	———
8– 2–22	72	351	N. Y., Lackawanna, & W.	Common	5,000,000	100.00	———
1923							
4–21–23	82	177	Greenbrier & Eastern....	Common	1,000,000	100.00	100.00
9–14–23	82	273	Chesapeake & Ohio.....	Pfd.	12,558,500	96.50	96.50

SALES OF RAILROAD BONDS AUTHORIZED BY THE INTERSTATE COMMERCE COMMISSION IN LOTS OF $1,000,000 OR OVER ARRANGED IN ORDER OF DATE OF AUTHORIZATION

DATE DECIDED	I. C. C. REPORTS		CARRIER	KIND OF STOCK	PRINCIPAL AMOUNT	TO BE SOLD AT NOT LESS THAN	PRICE AT WHICH SOLD
	VOL.	PAGE					
10–23–23	82	609	Illinois Central	Pfd.	$12,022,450	100.00	100.00 102.50 104.50
12–29–23	86	177	American Niagara	Common	1,000,000	100.00	
12–31–23	86	196	New York Central	Common	31,510,620.25	100.00	100.00
1924							
9–25–24	90	700	St. Louis & Ohio Riv	Common	1,446,500	100.00	100.00
10–21–24	90	828	Illinois Central	Common	14,256,000	100.00	100.00
1925							
2– 6–25	94	517	Conemaugh & Black L.	Common	1,000,000	100.00	100.00
10–20–25	99	744	Illinois Central	Pfd.	14,218,230	100.00	
1926							
4–22–26	111	127	Indiana Harbor Belt	Common	2,600,000	100.00	100.00
7– 8–26	111	457	Boston & Maine	Prior Pfd.	13,000,000	100.00	100.00
10–16–26	117	111	Detroit & Ironton	Common	2,972,000	100.00	100.00
11– 8–26	117	191–304	Southern Ry.	Common	10,000,000	100.00	

APPENDIX C

Excerpts From the Interstate Commission's Investigation of the Financial Affairs of Certain Carriers

From the report on the investigation of the Receiverships of the St. Louis and San Francisco Railway Co., and the Chicago and Eastern Illinois Railway Company. 29 I. C. C. 140 (January 1914):

The sale of securities to the investing public through the bankers at a time when every appearance indicated the insolvency of the issuing company, invites and warrants condemnation of all those who assisted or participated in such sale.

From the report on the financial investigation of the New York, New Haven and Hartford Railroad Co.: 31 I. C. C. 32 (July 1914):

The New Haven System has more than 300 subsidiaries, in a web of entangling alliances with each other, many of which were seemingly planned, created, and manipulated by lawyers expressly retained for the purpose of concealment or deception.

* * * * *

The result of our research into the financial workings of the former management of the New Haven system has been to disclose one of the most glaring instances of maladministration revealed in all the history of American railroading.

* * * * *

The revelations in this record make it essential for the welfare of the nation that the reckless and profligate financiering which has blighted this railroad system be ended, and that until this is fully done there will be no assurance that the story of the New Haven will not be told again with the stockholders of some other railroad system as the victims.

From the report on the investigation into the financial relations, rates practices, etc., of the Louisville and Nashville Railroad Co., The Nashville and Chattanooga and St. Louis Railroad and others—33 I. C. C. 172 (February 1915):

The above facts illustrate the manner in which permanent improvements on the Louisville and Nashville have in the past to a large extent been made out of earnings and subsequently charged to the capital account. As the Commission, in its annual reports has previously pointed out, only by the fullest publicity and public supervision of stock and bond issues may such increasing of the capital accounts of the carriers at the expense of the public be prevented.

From the report on the investigation into the financial transactions, history and operation of the Chicago, Rock Island and Pacific Railway—36 I. C. C. 56–61 (July 1915):

From the report on the investigation of the Pere Marquette Railroad Co. and the Cincinnati, Hamilton and Dayton Railway Co. 44 I. C. C. 147, 222 (March 1917):

Misrepresentation of assets in reports to stockholders appears to have been a practice of the directors of the railway company. . .

* * * * *

The property of the railway company will be called upon for many years to make up the drain upon its resources resulting from transactions outside the proper sphere in which stockholders had a right to suppose their moneys were invested.

These "fiscal agents", without themselves putting up a penny, borrowed $1,500,000 on the notes of the Pere Marquette, purchased worthless stocks at 41, sold the same immediately to the C. H. & D. at 42, which on the same day sold the same to the Pere Marquette at 47. The amount paid by the latter, $1,645,000, was entered as an "investment", was subsequently lost by reason of foreclosure of the terminal company bonds, and in 1908 was charged as a worthless asset to the Pere Marquette's "cost of road and equipment". . .

* * * * *

The exploitation in 1903, 1904 and 1905 of the Pere Marquette and the C. H. & D. was not an incident of railroad construction. The properties had long been established. Whatever control or regulation of the issue of railroad securities was exercised by the states in which these roads operated was inadequate to prevent the exploiting or to forestall subsequent hasty and unwise re-organization. To the extent that these flotations ultimately lodged in the hands of innocent investors, whether here or abroad, the public was deeply wronged. Whatever control or regulation was had of the properties and operations of the two roads was not sufficient to keep them in condition satisfactorily to serve the population dependent upon them. The result has been the same with each, financial disaster to the carriers, serious loss to the holders of their securities, deterioration of their physical properties, and a marked impairment of ability to perform their functions as public servants.

Nothing disclosed in the record before us is to be more regretted than the readiness of great banking institutions in our financial centres to loan enormous sums of money upon exceedingly precarious security in aid of such schemes as have been devised in the wrecking of these railroads.

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" 76—November 1922 to March 1923
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" 82—July to December 1923
" 86—December 1923 to April 1924
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